ISSUES CONFRONTING THE 1984 GENERAL ASSEMBLY

Informational Bulletin No. 144

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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ISSUES CONFRONTING THE 1984 GENERAL ASSEMBLY

Prepared by
Members of the Legislative Research Commission
Staff

Edited by
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Frankfort, Kentucky
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FOREWORD

This collection of briefs, prepared by members of the Legislative Research Commission staff, attempts to bring into sharper focus some of the major issues which have received considerable legislative attention during the interim. The reports by no means exhaust the list of important issues facing the 1984 Legislature. At the same time the alternatives and comments suggested are neither exclusive nor exhaustive.

Effort has been made to present these issues objectively, unemotionally, and in as concise a form as the complexity of the subject matter allows. They are grouped for the convenience of the reader into the various committee jurisdictions and no particular meaning is placed upon the order in which they are presented.

Staff members who prepared the reports were selected on the basis of their knowledge of the subject matter and their work with the issues during the 1982-83 interim. Most of the staff has worked closely with the interim legislative committees which studied the issues and helped draft some of the proposed legislation.

Vic Hellard, Jr.
Director

Frankfort, Kentucky
July, 1983

TABLE OF CONTENTS

PAGE

AGRICULTURE AND NATURAL RESOURCES 1
Low-level Radioactive Waste Disposal 3
Agricultural Districts 8
Grain Elevator Failures 10
Defining Small Mine Operation 11

APPROPRIATIONS AND REVENUE 13
Kentucky's Inheritance Tax 15
Taxing Unmined Coal 17
State Income Tax Reform 19
Funding the Small Mine Operator Assistance Program 22

BANKING AND INSURANCE 25
Automobile Insurance Stickers 27
The State Health Insurance Contract 29
Multibank Holding Companies 32
Unfair Claims Settlement Practices 36

BUSINESS ORGANIZATIONS AND PROFESSIONS 37
Expanded Optometric Practice 39
Community Access Programming 42
One-Stop Permitting 44
Private Security Personnel 46
Dual Licensure: Barbers and Cosmetologists 49
Tourism Development Districts 51
Eye Enucleation by Funeral Directors 52
Allocation of Stall Space at Thoroughbred Tracks 53
Photographic Evidence 55
Prompt Payment Act 56
The Composition of Boards of Barbering and Hairdressers and Cosmetologists 57

CITIES 59
Municipal Taxing Authority 61
Municipal Property Valuation Assessment Procedures 62
Municipal Antitrust Immunity 64
Restoring Urban Neighborhoods 66

COUNTIES 67
Adjusting County Officials' Compensation 69
Increasing State Support of Sheriffs' Offices 71
Growing Prison and Jail Populations 74
County Jail Funding 76
General Fiscal Management 77
Medical Care in Jails 78

EDUCATION 81
Educational Funding 83
Kentucky Teachers' Retirement System 84
Student Competencies 86
Gifted and Talented Programs 87

Financial Management of University of Affiliated Corporations......... 90
Reduction in Force.. 91
Teacher Competency Tests.. 92
Computers in Schools.. 93
Dealings Between University Affiliated and Non-Affiliated Corporations.. 94
University Affiliated Corporations and Public Funds....................... 95

ELECTIONS... 97
Public Financing of Election Campaigns.................................... 99
Number of Elected Constitutional County Officers.......................... 103
Decrease in Number of Elections... 107
State Lottery... 109
Election Contest Reform... 110

ENERGY.. 111
The Price of Natural Gas.. 113
Developing Renewable Energy... 116

HEALTH AND WELFARE.. 119
Decriminalization of Public Intoxication.................................. 121
Composition of the Certificate of Need Board.............................. 123
Sunrise Law for Health Occupations and Professions........................ 127
Continuation of Group Health Insurance Benefits........................... 128
Price Disclosure in the Health Care Industry.............................. 129
Family Responsibility... 131
Formaldehyde.. 132

JUDICIAL.. 133
Confidentiality of Adoption Records....................................... 135
Guardianship in Incompetency Cases.. 137
Contributory Negligence... 139
Capital Punishment.. 140
Drunk Driving Legislation... 141
Jury Sentencing vs. Judge Sentencing...................................... 142

LABOR AND INDUSTRY.. 143
Job Training Partnership Act.. 145
Unemployment Compensation... 149
Comparable Worth.. 154
Right-to-Work... 158
Prevailing Wage... 161
Workers' Compensation... 162

STATE GOVERNMENT.. 163
State Personnel Classification, Compensation and Evaluation............... 165
State Agency Job Openings and Promotions.................................. 170
Promotion from Within... 172
Commonwealth Capital Construction... 173
Computer Services Contracts... 174

TRANSPORTATION.. 177
State Assistance for Local Road Construction and Maintenance.............. 179
Transportation of Coal by Motor Carriers.................................. 183
Motor Carrier Weight and Dimensional Limits............................... 185
Motor Vehicle Transfers and Related Registration Fees..................... 188
Occupational Driver's License... 189

Agriculture and Natural Resources

Low-level Radioactive Waste Disposal

Prepared by Peggy Hyland

Issue

Should the Commonwealth enter an interstate compact in order to provide disposal capacity for the low-level radioactive waste generated in the state or should the Commonwealth take the necessary action to "go it alone"?

Background

In 1980, the U.S. Congress passed Public Law 96-573, the "Low Level Radioactive Waste Policy Act." The act does the following:

(a) Sets the policy of the federal government that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within its borders.

(b) Authorizes states to form compacts for the purpose of providing for the establishment and operation of regional disposal facilities for low-level radioactive waste.

(c) Provides that a compact becomes effective only when Congress has by law consented to the compact.

(d) Authorizes compacts after January 1, 1986 to restrict the use of the regional disposal facility to wastes generated within the region.

The impact of the legislation has been to force states to look at alternatives for handling their low-level radioactive waste.

The availability of commercial facilities for the disposal of low-level radioactive waste is already limited. At one time there were six commercial facilities for the disposal of low-level radioactive waste operating in the U.S. These facilities are located at Maxey Flats, Kentucky; West Valley, New York; Sheffield, Illinois; Barnwell, South Carolina; Beatty, Nevada; and Hanford, Washington. Currently three of the six facilities have ceased commercial burial activities; these are Maxey Flats, West Valley, and Sheffield. This leaves three operating sites to provide waste disposal for the nation. After January 1, 1986, any of these sites party to an interstate compact that has been approved by Congress may prohibit the disposal of wastes from states outside the compact. This means that Kentucky and many other states could have no place to send their waste after that date.

Table 1 shows the status of state action on interstate nuclear compacts as of April 18, 1983. It should be noted that all three states with operating sites (Washington, Nevada, and South Carolina) are actively involved with compacts.

Legislation has been introduced in Congress seeking approval of the

TABLE 1. COMPACT GROUPINGS & LEGISLATIVE STATUS AS OF APRIL 18, 1983

Midwest	Northwest	Central States	Rocky Mountain	Southeast	Northeast
Illinois	Idaho(R)	Kansas(R)	Colorado(R)	Georgia	Vermont
Indiana(R)	Washington(R)	Oklahoma(R)	Arizona	Florida	New Hampshire
Iowa(R)	Oregon(R)	Nebraska	New Mexico(R)	Tennessee	Maine
Kentucky	Utah(R)	Arkansas(R)	Wyoming(R)	Alabama	Connecticut
Michigan(R)	Alaska	Louisiana(R)	Nevada	North Carolina	Massachusetts
North Dakota	Hawaii(R)			South Carolina	Rhode Island
Ohio	Montana(R)			Mississippi(R)	Pennsylvania
South Dakota				Virginia(R)	New Jersey
Wisconsin					Maryland
Minnesota					Delaware*
Missouri					New York
Delaware*					

*Denotes states participating in more than one region.
(R) Denotes ratified by the state legislature and signed by the Governor.

Texas and California continue to pursue an independent course of action.
With the Mid-Atlantic compact becoming defunct, West Virginia is not currently associated with a compact group; other states formerly associated with the Mid-Atlantic compact (Virginia, Delaware, Maryland, North Carolina, and Kentucky) are associated with other compact groups.

Northwest compact (Senate Bill 247 and House of Representatives 1012).

During the 1980-81 interim a study was made of alternative methods for the management of Kentucky-generated radioactive waste. The study found that Kentucky produces less than one percent of the total radioactive waste generated in the U.S. annually. This places Kentucky 31st or 32nd among the states in the volume of waste generated (See LRC Research Report 192).

The study also found that 97 percent of the low-level radioactive waste in Kentucky is generated by the University of Kentucky and the University of Louisville. Activities at the universities that generate radioactive waste include diagnostic and therapeutic medical procedures, basic research, and general education. The remainder of the waste is generated by other hospitals, medical laboratories, and some industries. Industrial activities using radioactive materials in Kentucky include quality control programs involving materials thickness control and density measurements. Radiography is used for field pipeline construction and welding. Radioactive material is also used to "log" various gas and oil wells.

Radioactive waste generated by these various activities include contaminated laboratory equipment, glassware, filters, gloves, clothing, and discrete sealed sources. Generally, the waste produced by Kentucky users is low in radioactivity.

Both the University of Louisville and the University of Kentucky are taking steps to reduce the volume of waste they generate by use of onsite incineration. Incineration could substantially reduce the volume of waste the universities need to dispose of, perhaps by 90 percent or better.

Discussion

Although Kentucky, by comparison, is a low generator of radioactive waste, and although Kentucky's major generators are taking steps to reduce the volume of waste they produce, some facility for managing Kentucky-generated waste either in-state or out-of-state is still needed. Kentucky must have some plan for handling its waste by January 1, 1986, when existing commercial low-level waste disposal facilities that are located in states that are members of approved interstate compacts may prohibit Kentucky from disposing of its waste at these sites.

The alternatives facing the 1984 General Assembly are to join an interstate nuclear compact or to "go it alone" and provide for disposal of Kentucky-generated low-level radioactive waste in-state.

The Interstate Compact Option

Kentucky has attended negotiations for three different compacts, the Southeast, the Midwest, and the Mid-Atlantic. The Southeast compact is now set and Kentucky is not included as an eligible state. Kentucky could petition to become an eligible state after congressional approval of the compact, but the conditions and cost for becoming eligible are up to the initial compact members. The Mid-Atlantic compact is no longer functional, since its major waste generators have joined the Southeast compact. This leaves the

Midwest compact as the primary viable compact option for Kentucky.

The advantage of entering a compact is that Kentucky is assured of a place to dispose of its low-level radioactive waste once the compact has an operating regional facility. The primary disadvantage is the potential for Kentucky to be selected as a host state for a regional facility when it is in fact a small waste generator. Other questions of concern relate to the cost of entering and supporting a compact, the impact of the compact on existing state laws relating to radioactive waste disposal facilities, and uncertainties as to how compacts will actually function.

The "Going it Alone" Option

The advantage of this option it that it avoids dependence on other states for disposal capacity and the uncertainties associated with interstate compacts. The disadvantage is that it requires the establishment of some in-state facility to manage Kentucky-generated waste. Other questions of concern include the cost of an in-state facility and the authority of the state to restrict use of the facility to Kentucky-generated waste.

Data is currently being collected address some of these questions. The 1982 General Assembly (Senate Bill 279) directed a study be done by the UK and UL and coordinated by the Natural Resources and Environmental Protection Cabinet (NREPC) regarding the feasibility of building and operating a storage/treatment facility to manage all Kentucky-generated radioactive waste not otherwise managed by the generator. The study is to identify:

(1) The size of such facility, based on Kentucky's present and projected needs;

(2) Environmental and occupational hazards of such a facility;

(3) Regulatory requirements, federal, state, and local, which must be met;

(4) All costs for such a facility, including capital, operation, and closure.

This report should be available in the summer of 1983.

There are some constitutional concerns regarding this option that relate to the authority of the Commonwealth to prohibit other states from using a state-owned and operated facility in Kentucky (See City of Philadelphia v. New Jersey, 98 S. Ct. 2531 (1978), and Reeves v. State, 100 S. Ct. 2271 (1980)).

To avoid this area of legal concern, a compact of "go it alone" states has been proposed. The federal legislation does not require that compact states be geographically contiguous. A compact of "go it alone" states could provide that each state would take care of its own waste except in the case of emergency, for which some mechanism of providing temporary disposal capacity to a member state could be specified.

An Attorney General's opinion has been requested on the legality of excluding out-of-state waste under the "go it alone" option. The Attorney General has also been asked to evaluate the impact of the language of the Southeast, Midwest, and Mid-Atlantic compacts on existing Kentucky state law.

Once the additional information that has been requested is provided, the Subcommittee on Waste Management of the Interim Joint Committee on Agriculture and Natural Resources will make a recommendation to the full committee on the best approach to handling low-level radioactive waste generated in the Commonwealth and for legislative action in 1984.

OTHER ISSUES IN AGRICULTURE AND NATURAL RESOURCES

Agricultural Districts

Issue

Should the Agricultural District and Conservation Act of 1982 be amended to offer greater incentives to farmers to join agricultural districts?

Background

The 1982 Kentucky General Assembly passed the Agricultural District and Conservation Act, a law enabling farmers to group together and petition the local soil conservation district office to designate their farms collectively as an agricultural district. Once such a district is approved, the farms forming the district cannot be annexed by the local government.

This legislation was intended to encourage farmers to keep their land in agricultural production. Joining an agricultural district and being exempt from annexation counteracts some of the pressures on the farmer to sell his land.

Development for urban growth creates a substantial amount of the pressures farmers face. In a recent national study, the extent of the development of former farmland and its consequences first gained recognition. This study found that between the years 1967 and 1977 thirty million acres of farmland were converted to non-farm uses. In the same time period, Kentucky lost 760,000 acres to nonfarm uses.

Converting farmland to non-agricultural uses also has an indirect effect on agricultural production, since, as more of the better farms are sold for development, marginal land is put into cultivation. Marginal land is more susceptible to soil erosion, which results in problems of siltation of water resources and lessened productivity.

The Agricultural District Law seeks to strike a balance between the need to preserve good productive farmland for the future and the desire for economic growth and development today.

An effort to accommodate development is seen in the provision of the law not allowing agricultural districts to form in areas designated as Section 201 planning districts. A "201" district refers to an area surrounding an urban center where growth and the need for wastewater treatment facilities may occur.

At the time the Agricultural District and Conservation Act of 1982 passed, it was thought that excluding the formation of agricultural districts within "201" areas would avoid unduly restricting development. However, application of the law has proven to restrict the creation of agricultural districts.

Several possibilities exist for encouraging a greater number of farmers to join agricultural districts: replacing the "201" district limitation with a limitation more clearly connected to the immediate needs for urban growth; requiring farmers who join agricultural districts to commit their farms to the district for a five or ten year period; granting farmers in a district the right of first refusal of any farm for sale within the district; and reevaluating every five or ten years the justification for the district's existence.

Grain Elevator Failures

Issue

Should methods be found to reduce the financial losses of farmers resulting from grain elevator failures?

Background

Grain elevators are a key element of the marketing of Kentucky's cash grain crops. Grain elevator operators contract to buy or store a farmer's crop and then hold the grain until it can be sold to processors for the best possible price. Whenever a grain elevator experiences severe financial problems, farmers may experience similar financial strains.

First, the farmer may not be paid for his crop, since the elevator frequently does not have enough cash to pay all its creditors. Second, not only may the farmer not get paid, he may not be able to regain possession of his grain.

One very recent example of this problem arose in western Kentucky when one grain elevator was forced into bankruptcy proceedings. The loss to farmers who placed their grain in that elevator could reach several million dollars. A nationwide study offers further insight. In 1980, there were 104 grain elevators which declared bankruptcy. The 3,088 farmers who filed as creditors, claiming $24.4 million, received only $6 million.

The grain market is unpredictable, with the price of the grain constantly changing. By using grain elevators a farmer attempts to overcome market conditions, avoiding low prices at harvest time when the grain is put on the market by holding the grain until the price rises again.

A contract commonly used by farmers to sell grain to an elevator is a deferred-pricing (DP) contract. The DP contract enables a farmer to put his grain in an elevator, where it can be dried and graded and readied for sale, but the price is left open, in order that it can be set at a future date when the price is more favorable to the farmer.

A DP contract is an important marketing tool for grain producers. However, it also leaves the farmer exposed to financial difficulties if, before the price is set and the farmer paid, the elevator fails.

The possible solutions for easing the losses incurred by farmers from grain elevator failures range from a ban on the use of DP contracts to requiring grain elevators to be covered by a higher bond. Other possibilities include requiring a grain elevator to give a letter of credit to the farmer. Also, if insurance could be made available in Kentucky, a farmer could obtain private insurance protecting against grain elevator failures. Lastly, the state could train inspectors to be more alert to signs of elevators becoming financially weak and have accountants accompany the inspectors.

Defining Small Mine Operation

Issue

Should the definition of small mine operator in KRS 350.450 be changed from one mining 200,000 tons of coal annually to one mining 100,000 tons?

Discussion

The practice of providing assistance to small mine operators resulted from the enactment of the Federal Surface Mining Control and Reclamation Act of 1972 (PL 95-87). The state enacted legislation during the 1979 Extraordinary Session directing the Natural Resources and Environmental Protection Cabinet to provide permitting assistance to that segment of the coal industry they felt would be most negatively affected by PL 95-87. At that time it was felt that the 200,000-ton limit would be most appropriate.

Since 1979, another assistance program, also provided through the Natural Resources Cabinet, has been implemented; however, it is limited to miners producing 100,000 tons of coal or less annually.

If the definition of small operator were changed to 100,000 tons or less per year, approximately 120 small mine operators would no longer be eligible for assistance from the state under KRS 350.450. There are estimated to be about 1,000 miners who produce 100,000 tons or less annually.

Tightening eligibility requirements to coincide with its other assistance program would allow Natural Resources to focus its efforts on those miners financially least able to deal with the complexities of the new regulations. It would also reduce confusion among program administrators and the client population as to who is eligible for which program.

Appropriations and Revenue

KENTUCKY'S INHERITANCE TAX

Prepared by William G. Hart

Issue

Should the Kentucky inheritance tax be repealed or amended to increase exemptions and reduce the tax rates for favored beneficiaries?

Background

The Kentucky inheritance tax began in 1906, and is our next-to-oldest general tax. Over half the states, including Kentucky, impose an inheritance tax, and all states except Nevada impose some form of death tax, whether it is an inheritance, estate, or pick-up tax. For purposes of clarification, an inheritance tax is one imposed on the value of the share of a beneficiary of a decedent, while an estate tax is a single levy on the value of the entire estate of the decedent. A pick-up tax refers to a tax which allows a credit to the taxpayer against any federal estate tax liability for state death taxes paid. Every state imposing an inheritance or estate tax also has a pick-up tax provision.

To the general public, the inheritance tax is probably the most distasteful tax on the books. People simply cannot accept the proposition that the accumulated wealth of a lifetime of work and paying taxes should be taxed again at their death. Several theories of death taxation have been offered to justify the imposition of death taxes. The earliest justification offered was that the privilege of transferring property at death is purely a creation of law, and therefore the government has the right to set the conditions and limitations of such transfers. A second justification is that the receipt of property by a beneficiary automatically creates an ability to pay, in the sense that such property is a windfall for the beneficiary. Since it is property which, except for the death of the donor, would not have come into possession of the heirs, a tax on that property would not be burdensome. A third justification is that the taxes imposed at death are taxes imposed on the beneficiaries of unearned income. One other observation is that death taxes are not really high enough to accomplish any extensive redistribution of wealth. In the final analysis, however, the real reason for state death taxes, like the inheritance tax, is that they raise substantial revenue. In fiscal year 1981-82, the Kentucky inheritance tax brought in $29.6 million.

Discussion

Given the substantial revenue raised by the Kentucky inheritance tax and the tight budgetary situation in which Kentucky finds itself as we approach the 1984 General Assembly, it appears unlikely that any attempt at repealing the inheritance tax will be made. However, one possibility which might be considered is the chance that any revenue which would be lost through the repeal of the inheritance tax could be regained by revising the state individual income tax. This idea may become more attractive if any flat-rate income tax proposal appears to have a chance at passage.

The only other viable legislative alternatives are to increase the exemptions allowed to beneficiaries under the present law, and reduce the tax rates on transfers exceeding the exempt amounts. Exemptions of inheritable interests are currently granted to three classes of transferees. Class A transferees: a $50,000 exemption is granted a surviving spouse, a $20,000 exemption is granted infants or children who have been declared incompetent or mentally disabled, and a $5,000 exemption is allowed all other children, step-children, parents or grandchildren of the deceased. Class B transferees, which includes brothers, sisters, nephews, nieces, daughters-in-law or sons-in-law, and aunts or uncles, are granted a $1,000 exemption. Members of class C, granted a $500 exemption, include all other transferees. For the most part such transferees are educational or religious institutions, charities, and persons not related to the decedent. If the intent of the legislature is to reduce inheritance taxes on those persons who are the most natural recipients of the decedent's estate, then a general increase in the exemption for the surviving spouse and children would accomplish this purpose.

A 1974 study of the inheritance tax performed by the Department of Revenue revealed that over 70% of all transfers went to Class A transferees, and specifically to the surviving spouse and children. Bearing in mind that no federal estate tax is due unless the gross estate exceeds $325,000 in 1984, a decedent in Kentucky might avoid any death taxes whatsoever by leaving his entire estate to his surviving spouse and children, if the exemption for them were increased sufficiently.

Inheritance tax rates on those transfers which exceed exempt amounts currently range as follows:

Class A from 2% on its value not exceeding $20,000 to 10% on its value exceeding $500,000; Class B from 4% on its value not exceeding $10,000 to 16% on its value exceeding $200,000; and Class C from 6% on its value not exceeding $10,000 to 16% on its value exceeding $60,000. Once again, if legislative intent is to ease the burden on the most natural recipients of a decedent's bounty, the Class A rates could be scaled down even further to accomplish that goal.

TAXING UNMINED COAL

Prepared by Calvert Bratton

Issue

Should unmined coal be subject to ad valorem taxation?

Background

Kentucky has an unusual approach to the ad valorem taxation of unmined minerals. Under present law all minerals in place, except coal, are subject to the full state and local tax rates levied against other types of real estate. Often the minerals are taxed indirectly, i.e., their value is included in the assessment of the real estate surrounding them. However, if the mineral rights have been severed from the surface rights, the mineral rights are separately assessed.

The 1976 Regular Session of the General Assembly exempted unmined coal from local property tax levies. At the same time, however, it clarified the fact that unmined coal would be subject to the state property tax rate that applied to other forms of real estate. The 1976 General Assembly also assigned the responsibility for valuing coal in the ground to the Department of Revenue; prior to that time the responsibility had been that of local property valuation administrators.

The 1978 Regular Session of the General Assembly returned the responsibility for the assessment of unmined coal to the local assessor, and at the same time effectively made the entire process moot by reducing the state ad valorem tax rate applicable to coal from 31.5¢ per $100 of value to 1/10¢ per $100 of value.

The transfer of assessment responsibilities, combined with rate reduction, removed whatever incentive existed for a viable program of assessing unmined coal. The total assessment of unmined coal for 1982 was $301 million and produced only $3,000 in state tax revenue. Unmined coal was valued for property tax purposes in 1977 at $209 million and produced $658,000 in state tax revenue.

Of the 50 counties in Kentucky containing coal, only 24 reported an assessment on unmined coal in 1982.

Discussion

A proposal to make unmined coal a major revenue producer for state and local purposes has gained a great deal of publicity, particulary in Eastern Kentucky, where large tracts of coal land are held by out-of-state owners who pay little in the way of property taxes on their holdings.

Those who oppose the taxation of unmined coal contend that such taxation leads to forced or uneconomic development of the coal in order to avoid taxes on the coal in the ground. Previous experience, however, has not shown that taxing unmined coal did, in fact, increase coal production, or cause coal owners to mine before they were ready.

The taxation of unmined coal is justified on the grounds that the ownership of the property is an indication both of benefits received and ability to pay. The theory applicable in this instance is that each taxpayer should contribute to the necessary expenses of government in proportion to his wealth, and that all property should be treated alike for tax purposes.

There are several fundamental problems encountered in the taxation of unmined coal, however. One is its accurate assessment. It is extremely difficult to estimate accurately the amount of coal hidden in the ground. Coal seams vary in thickness, even over short distances.

Another problem incurred in the taxation of unmined coal is the identification of the property owner. Real estate records are frequently out of date. Kentucky does not require the recording of real estate sales, and such transactions, particularly when they occur in Eastern Kentucky, are often known only to the parties involved. This problem may be mitigated somewhat upon completion of the Kentucky Geological Survey's mineral property mapping project, which has as its goal the identification of all coal properties and their owners.

The taxation of unmined coal could lead to substantial increases in state and local revenues. The cost of making defensible assessments of unmined coal, however, would be substantial.

STATE INCOME TAX REFORM

Prepared by C. Gilmore Dutton

Issue

Should the General Assembly reform the state's individual income tax system?

Background

Reform of the state's individual income tax system has been a topic of legislative conversation during the interims and sessions of the General Assembly for at least the last 15 years. Often the focus has been upon simplication of the state income tax return, which, of course, would have to be preceded by simplification of the law. But there have been elements common to each proposal which would have meant the modernization of Kentucky's nearly four-decade old system.

Two proposals were put before the 1980 Session of the General Assembly. One had been developed during the preceding interim by the Interim Joint Committee on Appropriations and Revenue; the other was offered by Governor John Y. Brown, Jr.

Either bill, had it become law, would have disallowed the deduction of federal income tax, and would have increased the state's unrealistically low $650 standard deduction to the federal levels of $2,300 and $3,400 for single and married filers, respectively. The Governor's proposal went a step further than that of the committee, providing for the federal collection of the state's individual income tax.

As of the date of this writing, Governor Brown is again proposing to reform the state's individual income tax system. Unlike his 1980 bill, the current proposal would have the state continue to administer its own tax program, and unlike either of the 1980 proposals, the Governor's current proposal would abandon the state's traditional graduated rate system in favor of a single tax rate.

Discussion

The Kentucky individual income tax system remains substantially the same as when it was first enacted in 1936. State taxpayers are required to list income, adjustments to income, and both business and personal deductions, even though those items are listed for federal tax purposes, and even though the information filed by Kentuckians on their federal tax return is available to the state revenue department.

The deduction of federal taxes in arriving at state taxable income results in Kentuckians in the higher income levels paying a lower percentage of their income for state income tax purposes than those at lower income levels. Because of Kentucky's graduated rate schedule--2% of the first $3,000 of taxable income, 3% of the next $1,000, 4% of the $1,000 after that, 5% on taxable income between $5,000 and $8,000, and 6% on taxable incomes above $8,000--state taxpayers pay progressively greater percentages of their incomes in income taxes up to approximately the $50,000 income level; beyond that, the effect of the federal tax deduction overcomes the graduated rate structure and the amount of tax paid as a percentage of income regresses.

Many Kentuckians who must file a state tax return and pay state taxes are neither required to file a federal tax return nor liable for federal income taxes. This situation is primarily the result of the disparity between the amount state law allows a taxpayer to take as a deduction in lieu of itemizing personal deductions, and the amount that the Federal Code allows for the same purpose. By raising the state's standards deduction, each of the recent proposals to reform Kentucky's individual income tax system would have relieved more than 100,000 lower income taxpayers from the burden of filing state tax returns and paying state income taxes.

Each of these proposals would have also "held harmless" the state's individual income tax revenues; i.e., the new system would have produced the same amount of revenue as the old. And therein lies the major obstacle to reform.

When tens of thousands of taxpayers are eliminated from the tax rolls, and thousands of others are benefitted by higher standard deductions, someone has to pay more taxes, if revenues are going to remain the same. The fact that any taxpayer would pay more creates a political problem for reform-minded legislators, but designating who would pay more is critical to the adoption of reform.

The benefits included in the Governor's latest proposal would reduce the tax burden on approximately two out of every three taxpayers in the aggregate amount of approximately $40 million. Conversely, the tax burden would increase, in the aggregate, by approximately $40 million for the remaining one-third of the state's taxpayers. The break-even point for single taxpayers would be approximately $15,000; that is, below that amount single filers, on average, would pay less; above that they would pay more. The break-even point for married filers is approximately $30,000.

Under any system that would increase the standard deduction, the taxpayers most likely to benefit from that increase would be those who were utilizing the old, lower standard deduction. Taxpayers accustomed to itemizing deductions in amounts in excess of the new, higher standard deduction levels would lose.

Kentucky's current tax system has a built-in bias against one-wage-earner families. Each wage-earner is taxed under the present system independent of the other, so the individual incomes of a husband and wife, each earning $15,000, are subject to an effective tax rate much lower than the $30,000 income of one spouse in a one-wage-earner family. Since the federal income tax system does not reflect this same bias, and since proposals to reform Kentucky's tax system advocate closer conformity to the federal system, two-wage-earner families end up losing their preferred position and often end up as losers under the new proposal.

Break-even points can be set through the selective use of graduated rates or income level based credits. However, under any proposal for reform that would protect the state's individual income tax revenues, some taxpayers must pay more taxes. And under the currently accepted definitions of "reform," those taxpayers who will pay more are invariably taxpayers who itemize deductions and who are members of two-wage-earner families.

Adoption of any "hold harmless" income tax reform measure would subject the legislature to charges of tax increase by a significant portion of the state's income taxpaying public. Reform alone may not be a sufficient gain to offset that burden.

There are also those who believe that everyone, regardless of income level, should pay some amount of income tax, however little. These people argue against reforms that would remove substantial numbers of taxpayers from the tax rolls.

It could well be that, in Kentucky, individual income tax reform can only take place when reform can be coupled with relief for all taxpayers, so that no taxpayer's burden would increase, or when the system is designed to produce additional revenues for the state's treasury, so that the political burden of increased taxes would be matched against the benefits both of reform and new revenues.

FUNDING THE SMALL MINE OPERATOR ASSISTANCE PROGRAM

Prepared by John Downard

Issue

Should the General Assembly continue to fund a small mine operator assistance program?

Background

A small mine operator assistance program (SOTAP) was established by the General Assembly during the Extraordinary Session in 1979 and now codified in KRS 350.450(4). It was then felt that complying with the Federal Surface Mining Control and Reclamation Act of 1977 (PL 95-87) would be extremely difficult for the small operator. The Natural Resources and Environmental Protection Cabinet was directed to adopt programs toward eliminating delays in the processing of permits by establishing a special administrative program to review small operators' permit applications and provide access to technical assistance necessary for permitting.

Natural Resources developed a permit review system designed to eliminate delays for small operators. A nonprofit organization known as the Kentucky Small Operators Technical Assistance Project, Inc. (KSOTAP, Inc.) was created by Natural Resources to provide permitting technical assistance. It was responsible for reviewing small operators' permits, identifying errors and correcting deficiencies. Small operator permits were given first priority when they were received by Natural Resources. If there was a problem with a permit, Natural Resources would call the SOTAP, Inc., office in Frankfort. This process was designed to mitigate delays in the permit process and allow the miner to begin mining as soon as possible.

The 1980 General Assembly drastically changed the program by appropriating all funds for small operators assistance to the Energy Cabinet. In June of 1980 Governor Brown issued E.O. 80-473, which transferred approximately half of the funds back to Natural Resources. Thus, the program was split; however, the statutes were not amended to reflect any change in responsibilities for the respective agencies.

The Energy Cabinet decided not to utilize SOTAP, Inc., and established an in-house program with one individual in Lexington and four in field offices. Natural Resources has continued to give small operator permits priority review, although no formal lines of communication were ever established between the part of the program in Energy and the part in Natural Resources. The 1982 General Assembly charged the Program Review and Investigations Committee with the responsibility of reviewing the program and making a recommendation to the 1984 General Assembly as to whether the permitting technical assistance program authorized in KRS 350.450(4) and now operated by the Energy Cabinet should be continued.

Discussion

Does the small operator merit continued assistance? Small coal operators make the following contributions to Kentucky's economy:

1. They produce 27% of coal mined in 1981 (42.5 million tons);

2. They generated $56.8 million in state severance tax revenues in 1981; and

3. They provide between 10,000 and 15,000 jobs, resulting in between $300 million and $400 million in primary wages (based on the average hourly wage earned by miners).

Since 1979 another major assistance program has become available to small operators. PL 95-87 levied a federal coal severance tax, part of which is used to pay for hydrological and geological studies required under the act to obtain a permit. Natural Resources is also developing a data base that will provide all operators with data necessary to complete a permit application.

The Energy Cabinet has developed its part of the program around four field representatives. These representatives work with individuals, most of whom already have permits, and help them deal with practical problems they encounter. They attempt to find buyers for small operators' coal, assist in obtaining additional permits required to operate, and encourage small operators to stay current with reclamation and releases. These field people are, in effect, advocates for the small operator.

The questions facing the 1984 General Assembly will be:

1. whether to continue funding the program;

2. whether to leave the arrangement as it currently exists with responsibility for small operator assistance divided between the two cabinets, KRS 350.450(4); and

3. whether to transfer all responsibility for the program to either the Natural Resources or Energy Cabinet and amend pertinent statutes to reflect these changes.

Banking and Insurance

AUTOMOBILE INSURANCE STICKERS

Prepared by Bill VanArsdall

Issue

Should the automobile insurance sticker law be repealed?

Background

Kentucky is the only state with an insurance sticker law. A number of states require motorists to show proof that they carry insurance, but only in Kentucky must a gummed label be affixed to the window of each vehicle.

There have been efforts to repeal this law in each session of the General Assembly since it was enacted in 1978. Drivers complain that stickers are messy and hard to remove. Police enforce the law, but they cannot be expected to give it the attention which full enforcement would require. And the system is not foolproof, since a motorist who cancels an insurance policy immediately after receiving a sticker can drive for months without any visible evidence that the vehicle is uninsured.

Discussion

The 1982 General Assembly enacted a comprehensive vehicle title law. Information on each vehicle is to be stored in a central computer data base (AVIS). If the computers were programmed to receive information on whether each vehicle is covered by insurance, the need for the sticker law would disappear.

Police could request information from the computer on the insurance status of each vehicle which is stopped in the process of enforcing highway laws.

County clerks could be instructed to deny registration of any vehicle until the computer confirms that the mandatory insurance has been purchased. A lawsuit has already been filed to test the constitutionality of a 1982 Kentucky law denying registration to vehicles unless property taxes are paid. If that law is declared valid, there should be no question about the constitutionality of a similar law on insurance.

KRS 186A.040(1), enacted by the 1982 General Assembly, allows the Department of Insurance to involve itself in this determination: "The Department of Insurance is hereby authorized to develop a program whereby that department shall provide information on the insurance status of vehicles registered in the Commonwealth of Kentucky to the Bureau of Technical Services for inclusion in the AVIS data base." That is, the Department of Insurance <u>may</u> put vehicle information in the central computer; the language of the statute is permissive. The Commissioner of Insurance has already stated that his department cannot participate in this program without additional funding and staff.

Legislation could be passed in 1984 which would require the department to participate and which would give it the money it needs to do the job effectively. In this way, the sticker law could be eliminated.

THE STATE HEALTH INSURANCE CONTRACT

Prepared by Bill VanArsdall

Issue

Should laws affecting the group health insurance plan for state employees and school teachers be changed?

Background

There have been a number of complaints about the group health insurance contract for state employees and teachers. Some of the people covered by this plan feel that provisions adopted in October of 1982 unfairly restrict benefits without significantly reducing premiums.

The terms of the state health insurance contract were changed in 1982 because of what many state officials see as a crisis in health care costs. Charges for hospital treatment and physician visits are rising much faster than the cost of most other goods and services, and the percentage of per capita income that is spent on health care is growing. Unless something is done, these officials say, health expenses for each Kentuckian will more than triple over the next ten years.

In response, the process of awarding the state group health insurance contract was altered. A set of specifications was developed by the Task Force on Group Health Insurance, and the contract was put out for bids. The only insurer submitting a bid was Blue Cross/Blue Shield of Kentucky, which already health the contract. The 1982 specifications included several new features, including aggressive employee education programs, reporting and auditing requirements, and cost-containment provisions.

It is these six cost-containment provisions which are at the heart of the controversy over the contract. They include:

1. Mandatory ambulatory surgery--The specifications originally provided that forty-four non-emergency surgical procedures would be covered only if they were performed on an outpatient basis. If a patient stayed in a hospital overnight for one of these procedures, there was to be no insurance reimbursement unless a doctor preauthorized the hospital stay. This requirement has been softened since the adoption of the contract: patients who stay overnight for these procedures are now to be reimbursed at a rate of 50%. The forty-four procedures include removal of adenoids, removal of tonsils, and several other operations for which hospitalization is often prescribed.

2. Incentive 24-hour maternity stay--Cash awards up to $125 are given to mothers who leave the hospital within one or two days after normal deliveries. After the adoption of the contract, it was decided that a cash award should only be available if a physician authorizes the departure from the hospital.

3. Incentive second-opinion surgery--For fourteen non-emergency surgical procedures, a second opinion is required in order to receive 100% of the bene-

fits that would normally be paid. If a second opinion is not obtained, 50% of the usual covered services will be paid.

4. Early admission--Hospital expenses are paid for only one day of hospitalization before surgery, unless a longer stay before surgery is medically necessary.

5. Pre-admission testing--Pre-surgery tests done on an outpatient basis are covered as if they were performed while the patient is in the hospital.

6. Pre-admission authorization--Blue Cross/Blue Shield will preauthorize admission to the hospital and give approval in advance for the length of the stay.

These cost-containment provisions, particularly the ambulatory surgery requirements, have sparked a heated debate. Patients complain that they are penalized merely for following their doctors' orders. They complain they are not made aware of the new restrictions until after the treatments are performed and their claims are denied. Physicians may refuse to perform some of these procedures on an outpatient basis. Some patients feel that their claims have been summarily dismissed despite proof that hospitalization was medically necessary.

The Department of Personnel estimates that the savings resulting from the cost-containment provisions for the first year amount to $14.31, or $1.19 a month, for each contract. This represents a reduction of 2 1/2% in the premium. Some employees and teachers feel that this reduction is too small to justify the inconvenience and uncertainty caused by the new requirements.

Discussion

Several changes in the law have been suggested.

Although an attempt was made to lower the cost of the contract by soliciting competitive bids, only one company submitted a bid. This situation has prompted suggestions that the law be changed to make the contract more attractive to other insurers.

When asked why they did not bid on the contract, many insurance companies cited the municipal premium tax. Kentucky cities are permitted to charge taxes on the premiums received by insurance companies, but there is an exemption for companies located within the state. Blue Cross/Blue Shield, the only bidder on the state contract, qualifies for this exemption. The other insurers that are large enough to comfortably handle the state policy are located out-of-state. This circumstance places those other insurance companies at a competitive disadvantage.

Cities depend heavily on the premium tax for revenue, and it would hardly be feasible to take away entirely their power to impose this tax. But removing it in limited cases might encourage more competitive bidding on the state contract. Health insurance premiums bring in less revenue to cities than several other types of insurance premiums, so it might be possible to remove the cities' power to tax health insurance. Another suggestion is to exempt the state health insurance contract alone from the municipal premium tax. The state contract presently accounts for no municipal revenue, since it is held by an in-state insurer, so this would cause no loss of tax money to any city.

Another suggestion for improving the contract is to change the procedure by which it is awarded. Since state employees are directly affected by the contract, perhaps they should be given a stronger voice in deciding on its terms. Recommendations might be submitted to state employees for comment, or more state employees might be allowed to participate in the decision-making process.

The responsibility for the insurance plan is currently divided among several branches of state government. The Secretary of Finance signs the contract, after receiving a recommendation from the Commissioner of Personnel. The Department of Insurance reviews the contract to make sure it does not violate state law. Some state officials have complained that this process leads to a diffusion of responsibility: there is no single person or department with ultimate power to make important decisions. One staffer of the Governor's coalition to study the problem suggests a Cabinet-level policy-making commission and an Office of Health Insurance Administration. This kind of centralization could eliminate inefficiency and produce a better health insurance contract for state employees.

MULTIBANK HOLDING COMPANIES

Prepared by Greg Freedman

Issue

Should the Kentucky General Assembly authorize the formation and operation of multibank holding companies in Kentucky?

Background

Although bank holding companies have existed since the 1920's, it wasn't until 1956 that the first comprehensive federal legislation regarding these institutions was enacted (12 USCA 1841-50). A bank holding company (BHC) is a corporation that controls one or more banks in the United States. A BHC that controls two or more banks is a multibank holding company. A company must obtain approval from the Federal Reserve Board to become a BHC. In addition to owning banks, BHC's are permitted by the Federal Reserve Board to own certain nonbank businesses which the Board has determined are closely related to banking. These include mortgage, finance, credit card, and industrial loan companies. In 1956 there were 47 multibank holding companies, which controlled 7.6 percent of commercial bank deposits in the United States, and 117 one-bank holding companies. By the end of 1980 there were 361 multibank holding companies, which controlled 2,426 banks, and there were 2,544 one-bank holding companies. The subsidiary banks of BHC's held 74.1 percent of domestic commercial banking assets.

Discussion

KRS 287.030 provides that no person may own more than one half of the capital stock of a bank. However, there is an exception which provides that a person may own more than one half of the capital stock of not more than one bank, but such person may not own or acquire capital stock in another bank. This statute permits the operation of one-bank holding companies in Kentucky. These BHC's may engage in the non-banking activities permitted by the Federal Reserve Board but may own only one bank. In 1982 West Virginia became the latest state to authorize MBHC's and now Indiana is the only one of the seven states surrounding Kentucky which does not permit the formation of MBHC's.

During the 1982 Kentucky General Assembly HB 194 was introduced. The bill permitted the formation of MBHC's, subject to certain restrictions. The bill was defeated by the House on February 4 by a vote of 44-55. The vote was reconsidered and on March 17 the bill passed the House by a vote of 50-47. However, on March 25 the Senate defeated the bill by a vote of 19-20.

Arguments Pro and Con. There are numerous arguments in support of MBHC's and in opposition to MBHC's. Some economists and researchers contend that MBHC's enhance the economic development of a state, while others contend that there is no relationship between banking structure and a state's economic development. There are some persons who argue that MBHC's will increase the concentration of banking resources, while others assert that they have meant a decline in concentration. The General Assembly will have to sort through these conflicting claims and determine whether MBHC's are in the best interests of the people of Kentucky.

During the hearings held in the summer of 1981 and in January, 1982, the members of the Committee on Banking and Insurance heard the views of bankers, businessmen, farmers and others as to whether Kentucky should authorize the formation of MBHC's. The following list represents most of the points raised during those hearings.

AGAINST

1. Increase in concentration of banking resources. Farm credit is curtailed when banking becomes too concentrated.

2. The extensive correspondent banking system works well and encourages the flow of capital through loan participations, federal funds, and interstate deposits.

3. Reduction in competition.

4. Higher prices for bank services.

5. Fewer offices, shorter hours, and stereotyped loan policies.

6. Large banks will pull out of local communities when times are bad.

7. Local banks effectively meet the needs of local businessmen because they know the businessmen and their businesses. Local banks are more likely to lend to farmers during bad financial times when the smart money is not invested in farm loans.

8. Stock in smaller, independent banks will be cut in half because of competition.

9. Historic autonomy of community banking will be destroyed.

10. Large banks will improve their own capital ratios at the expense of community banks.

11. There is no statistically significant relationship between the type of bank structure a state has and its rate of economic growth.

12. Studies show that banks in the size range of $50-$100 million are the most efficient.

13. Computers have enabled even the smallest bank to offer wide-ranging services.

14. MBHC's do not realize economies of scale.

15. A larger number of banks would be owned and controlled by people outside the banks' trade areas.

16. The banking structure does not need to be changed; rather the financial institutions need to be allowed to offer new products and services to compete with nonbank financial institutions.

FOR

1. We would enable banks to meet the needs of farmers which are not being met and the needs of coal mine operators who now secure funds from out-of-state banks.

2. Banks should have the option to create MBHC's.

3. We would provide a market for those banks who need or want to sell or merge.

4. MBHC's are needed to compete with savings and loan associations, credit unions, money market funds, and other nonbank financial institutions.

5. We would enable a bank to feel it has a stake in the economic development of a state and facilitate economic growth of a state with momentum for growth.

6. New competition, new technology, new risks, and the new trend of deregulation increase the advantages of a larger-scale operation in the banking business.

7. We would enable banks in northern Kentucky to compete with the largers banks in Cincinnati.

8. We enable Kentucky banks to prepare themselves to compete with larger banks which will locate in Kentucky when interstate banking is allowed.

9. MBHC's will not affect most communities. Five years after enactment of a bill authorizing MBHC's there will be 8 to 12 MBHC's, with 75 to 80 subsidiary banks, and 265 to 270 independent banks.

10. MBHC's permit banks to keep their autonomy, while providing such benefits as increased lending capacity, flexibility and expertise.

11. We would enable banks to broaden their economic base and bid competitively for funds.

12. Experience in other states indicates that independent banks compete effectively with MBHC subsidiaries.

State Regulation. The Kentucky General Assembly will need to decide whether to allow MBHC's to be regulated only at the federal level or to permit the state Department of Banking and Securities to exercise some control. This kind of authority includes approval of formation of BHC's approval of acquisition of banks, and the duty to examine the parent company and nonbank subsidiaries. West Virginia (31A-8A-4) requires a fee of $2,500 for a company to become a BHC or for a BHC to acquire a bank. New York (Banking, 142, 143b) charges a fee of $5,000. Massachusetts (167A, Sec. 4) charges a fee of $1,000. West Virgina (31A-8A-5f) also charges an annual registration fee of five dollars per million dollars of total deposits in banks controlled by the

BHC.

The General Assembly may want to restrict the share of total state deposits that may be held by a MBHC. Iowa has an 8 percent limit (524.1802), West Virginia has a 10 percent limit (31A-8A-4), Tennessee has a 16.5 percent limit (45-2-1403), and Missouri has a 13 percent limit (362.915). According to the Conference of State Bank Supervisors, Arkansas has a 12 percent limit. Nebraska has a 9 percent limit. New Hampshire has a 20 percent limit, and New Jersey has a 20 percent limit. HB 194, which was defeated by the 1982 General Assembly, would have imposed a 20 percent limit.

Besides state Department of Banking authority and limitation on the share of total state deposits, there are other restrictions the General Assembly may wish to consider. Tennessee (45-2-1403), New York (Banking, Sec. 142-a) and Georgia (13-207.3) prohibit with certain exceptions, the acquisition of control of a bank which has been in operation less than five years. HB 194 would have prohibited the acquisition of control of more than 3 banks during any twelve-month period. Illinois (17-2504) has divided the state into five regions and prohibits a MBHC from expanding outside its region.

Finally, the General Assembly will need to consider whether it wants to enact a reciprocity provision, which would enable an out-of-state BHC to acquire control of banks in Kentucky if the state in which the acquiring BHC is located permits Kentucky BHC's to acquire banks in that state. Maine (1013) has a statute that extends reciprocity acquisition rights. New York (Banking, Sec. 142-b) has a reciprocity provision which requires the out-of-state BHC to file an application with the superintendent and pay a $5,000 investigation fee. According to the Conference of State Bank Supervisors, other states with reciprocity provisions include Alaska, Delaware, South Dakota, and Massachusetts. The reciprocity provision in Massachusetts applies only to the New England states.

UNFAIR CLAIMS SETTLEMENT PRACTICES

Issue

Should legislation be enacted to define unfair insurance claims settlement practices?

Background

In 1971 the National Association of Insurance Commissioners (NAIC) adopted a model act on unfair claim settlement practices. By 1980, some form of the act had been adopted in twenty-seven states. The act lists fourteen practices which are deemed unfair if committed or performed with such frequency as to indicate a general business practice. At the 1982 Session of the General Assembly, the House passed HB 360, which was an unfair claim settlement practices act. The bill died in a Senate committee.

A point of contention in legislation on unfair claim settlement practices is the remedy provided the insured. When HB 360 was introduced it authorized an insured party to file a civil action against the insurer and seek actual and punitive damages. Opponents of the bill contended that the bill should not contain a provision on civil actions, but rather, the insured should have the right to file a complaint with the Department of Insurance. In at least three states the courts have ruled on whether the NAIC model act provides a basis for a private suit for damages. It appears that New York and California have allowed damages based on a violation of the act. Oregon has held the act to be regulatory in nature and that no cause of action was created by the act.

Business Organizations and Professions

EXPANDED OPTOMETRIC PRACTICE

Prepared by Michael Greer

Issue

Should the scope of practice for optometrists be expanded to permit them to diagnose and treat eye disease?

Background

Optometry is the field of eye care traditionally dealing with visual defects which are mechanical in nature. Optometrists measure visual acuity and prescribe optical divices for the correction of problems detected. Under Kentucky law, optometrists are not permitted to diagnose and treat eye disease. This is generally considered the practice of medicine and falls under the purview of the ophthalmologist, a medical doctor who specializes in the eye.

In recent years, the optometric profession in Kentucky and in other states has sought to expand the scope of optometric practice to include the use of drugs in the diagnosis and treatment of eye disease. There appear to be two reasons for this effort. First, optometrists feel their education contains sufficient biomedical and pharmacological training to prepare them to practice competently. Second, optometrists are feeling some consumer pressure to provide a wider range of primary eye care services, particularly in rural areas without ophthalmologists.

In 1978, the Kentucky General Assembly enacted legislation which expanded optometric practice somewhat by permitting optometrists to use certain drugs in diagnosis. The 1982 General Assembly considered legislation, SB 147, which would have expanded their practice even further to include the use of drugs in treating disease. The bill was opposed by the Kentucky Academy of Eye Physicians and Surgeons, a professional group representing ophthalmologists, and it failed.

Discussion

A number of economic issues have been raised in regard to expanding the scope of practice for optometrists, including distribution of practitioners, availability of services and cost of services. These are legitimate issues, but they are secondary to the primary issue, which is the adequacy of optometric training. Specifically, are optometrists competently trained to diagnose and treat eye disease?

There are basically two approaches to this issue. The most direct approach is to analyze optometric education to determine if the curriculum would prepare practitioners to competently practice the expanded functions. In February, 1983, the Interim Joint Committee on Business Organizations and Professions sent a delegation to Memphis, Tennessee, to visit the Southern

College of Optometry. On this same trip, the delegation also visited the medical school at the University of Tennessee in Memphis, in order to compare medical and optometric education.

There are currently thirteen accredited schools of optometry in the U.S. educating students in a four-year professional program. Kentucky does not have an optometric school, but purchases eight seats per year for Kentucky students in each of three optometric schools: Southern College of Optometry, the University of Alabama in Birmingham, and the University of Houston.

The main problem in comparing the two fields is determining what levels to compare. The medical community feels that the comparison should be made between optometrists and ophthalmologists, since both are eye specialists. Optometrists feel the comparison should be between physicians and optometrists, since it is at this level that most initial primary care patient contact is made and treatment performed.

Optometric education has evolved over the years. More biomedical course work has been added to optometric curricula to give graduates a more complete understanding of the eye. Forty-three percent of the course work at Southern is biomedical in content, including 20 quarter hours in pharmacology. In terms of course content dealing with the eye, optometry would appear to compare favorably with basic medicine, although a lack of ophthalmologists on the teaching faculty is pointed out by ophthalmologists as a major deficiency.

An important aspect of both educational programs is clinical practice, which involves actual treatment through hands-on patient contact. An optometric student sees, mainly during the senior year, approximately 650 patients, which compares favorably with the clinical exposure to eye problems received by medical students. An ophthalmology resident, however, during his three-year residency sees approximately 9,000 patients. Ophthalmologists feel that contact of this extent is necessary for a student to see a broad range of eye pathology and be competent to diagnose and treat.

An indirect way of viewing the competency issue is to look at actual practice experience in states that permit an expanded practice. Since 1971, fourteen states have allowed optometrists to dispense drugs. In ten of these states, use is limited to diagnostic agents, but in four (Louisiana, North Carolina, New Mexico and West Virginia) optometrists are permitted full use. In addition, the statutes in nine other states and the District of Columbia are non-committal on the use of drugs and many optometrists in these states engage in an expanded scope of practice.

The West Virginia legislature enacted expanded practice legislation in 1976. In a 1981 report to the legislature, the Board of Optometry stated that in the four and half years that the legislation had been in effect there had been no reports of adverse reactions in diagnosis and treatment. This is disputed by ophthalmologists, who allege that there have been at least twenty cases of mismanagement each year, but this allegation has not been substantiated.

Other evidence of actual practice experience is found in malpractice rates and claims. In a letter to a New Jersey legislator, the administrator of a major carrier of optometric malpractice insurance stated that his company's loss experience with optometry on a national basis had been very favorable. He further stated that in two states where expanded practice has been authorized, the malpractice loss experience of his company had been extremely favorable and they do not anticipate an adverse loss experience from expanded practice. Ophthalmologists contend, however, that expanded practice laws have not been in effect long enough for adverse situations to be reflected in the loss experiences and rates.

This issue provides a particular delimma for legislators. There are good arguments on both sides and the evidence does not support a clear-cut decision. The Committee has been exploring ways optometrists can be allowed to fully use their training while maintaining protection of public health.

One proposal being considered by the Committee would authorize expanded practice as a four-year "pilot project" under controlled conditions and safeguards. Expanded practice would be limited to minor eye disease, with a mandatory requirement for referral of more serious cases to an ophthalmologist. The use of drugs would also be limited to those approved for ophthalmic use and contained in the Ophthalmology Physician's Desk Reference. Optometrists certified for expanded practice would report diagnoses and treatment periodically to a special oversight task force consisting of representatives of both professions and lay members. This task force would monitor reports, investigate adverse situations, and, based on these adverse situations and the data, advise the 1988 General Assembly whether expanded practice should be continued permanently.

COMMUNITY ACCESS PROGRAMMING

Prepared by Michael Greer

Issue

Should the state encourage and provide incentives for community access programming.

Background

Cable television originated in the 1950's as a means of bringing television broadcasts to isolated rural areas. In the ensuing years, cable operators and government officials have realized the revenue-generating potential of cable and cable systems have proliferated.

According to the 1981-82 Television Factbook, there are 150 cable systems in Kentucky, serving 468 communities. An additional 38 franchises have been approved but are not yet operating, and 30 applications for franchises are in the process. The operating cable franchises serve 308,909 subscribers, meaning that cable reaches a little over a million people or roughly 28% of the state's population. And the number is growing.

One aspect of cable television which has only recently been disclosed to any extent is community access programming. This programming is generally defined as programming which is produced for, by and about people within the community. A growing number of citizen groups and public officials are seeing community access programming as a very valuation and important communication resource within the community. Parallels are drawn between access to the print media, which has become a traditional means of communication, and access to the electronic media; however, there appears to be a much greater potential with the latter, because of the scope and diversity television offers and the fact that intrinsically it seems to have a greater impact.

In the 1982 Session of the Kentucky General Assembly, a bill to encourage and stimulate community access programming was introduced. The bill, HB 772, created a special fund called the "community access programming incentive fund," to be administered by the Department of Arts. Grants up to $25,000 for community access programming would be made from the fund to cable systems not providing community access programming, and grants up to $5,000 would be provided to individuals for the development of particular programs. The bill would have appropriated $250,000 from the General Fund for each of the next two fiscal years to operate the program.

HB 772 did not pass, but the Subcommittee on Business Regulation of the Interim Joint Committee on Business Organizations and Professions decided to study community access programming during the 1982-83 interim.

Discussion

One of the issues being studied is the availability of access to cable systems by groups interested in community access programming. There does not appear to be a problem with newly franchised cables to large urban areas. Many cable companies have aggressively competed for these franchises and have included local access channels and even company-produced local origination programming as part of the franchise package. The problem, at present, in these markets is one of under-utilization. The supply of community access programming has not matched the availability of access.

The situation is somewhat different in other areas. Community access is not available with many cables in smaller rural communities. These cables are generally franchised through long-term agreements which do not make provisions for community access programming. In addition, many of these systems have no room for community access programming, because they are limited to thirteen already dedicated channels. Community access must be made attractive and desirable to these cable operators and it is in these markets that an incentive program would probably have the most impact. There is general agreement that some sort of incentive approach would be more effective than statutorily mandating access, which the federal government used to do.

Another issue under consideration is the method of funding for the incentive fund. Under HB 772, funding was to come from the General Fund, and, given the condition of the state budget last session, this is probably the main reason for the failure of the legislation. It appears that the state budget will be no better next biennium, so other methods of funding must be explored.

One method would be to fund the program through a percentage of subscriber fees. This is the current method of financing for most community access operations. For large cable systems, the cost is insignificant and even for small cable systems, the cost is not excessive. For example, Cable 10, a community access station in Frankfort, is supported from subscriber fees, yet the cable rate for Frankfort is still among the lowest in the state.

The simplest and probably the most equitable way of financing through subscriber fees would be to divide the total cost among all cable subscribers. This would mean that in order to finance at the level specified in HB 772, a subscriber rate would be increased eighty cents per year or a mere seven cents per month.

A final issue being considered is who gets access and who makes this determination? The Subcommittee on Business Regulation held a meeting on community programming in Morehead, which was broadcast live in Morehead cable through the media center at Morehead State University. Viewers were able to phone in questions and comments to the Subcommittee; the predominant question concerned who would get access. There was general concern that local programming might be dominated by narrow-focused special interests, rather than be representative of community interests. The Subcommittee members agreed that access decisions should be made at the community level, since standards would vary from community to community. It might be necessary, however, to establish access guidelines and prescribe a procedure in legislation.

ONE-STOP PERMITTING

Prepared by Don Brothers

Issue

How should Kentucky structure a "one-stop permitting" program for facilitating business licensing?

Background

Over the years, Kentucky has developed a complicated regulatory framework by requiring licenses, permits, certificates or other grants of authority for engaging in specified business activities. While much of this regulation may be justified, complying with all state requirements does create a hardship on new and expanding small businesses. Several other states with this problem have addressed it by establishing a central location in state government to process license applications.

The Small Business Task Force began consideration of a "one-stop permitting" program during the 1980-81 interim, but concluded, that it lacked the time to adequately prepare enabling legislation for the 1982 Regular Session. The Task Force introduced 1982 HB 110 (KRS 152.950 - 152.958) which created an executive branch task force to study one-stop permitting and required that the task force report on the feasibility of the program by January 1983. That task force's report concluded that the cost of implementing one-stop permitting outweighed the benefits and suggested a clearinghouse alternative. The Small Business Task Force vigorously disagreed with that conclusion and requested that the executive task force review its findings. The Small Business Task Force has subsequently established a subcommittee to review present licensing practices and make recommendations on enabling legislation. The Task Force has also received expert testimony from the administrators of Washington State's Business License Center and Colorado's Business Information System.

Discussion

Several alternatives are available to Kentucky in implementing a "one-stop permitting" program. Discussion is presently focused on the scope of the program, the location of the office and funding. The Subcommittee to Study One-Stop permitting plans to examine all the alternatives and make recommendations to the Small Business Task Force.

The services that can be provided by a one-stop permitting office range from a minimum of a clearinghouse approach, such as that recommended by the executive task force, to a comprehensive master applications, licenses, and renewal approach, such as in Washington State. Thus far, the master license approach has generated the most support. Under this alternative, master applications, licenses, and renewals would be developed on an industry basis. Industries that typically have to obtain licenses from multiple locations within state government would be able to submit one master application to the one-stop permitting office. This office would be responsible for disseminating the information contained on the master application to the appropriate regulatory agencies. These agencies would consider the application, decide whether to grant the license and report their decision to the one-stop permitting office. The office would then issue a master license including all appropriate licenses.

The location of the one-stop permitting office is considered to be vital to its success. The office must be located within an agency of state government that is interested in the program, able to gain the cooperation of all regulatory agencies and is accessible to businesses. Since this proposal was first considered in the 1980-81 interim, the Commerce Cabinet has generally been viewed as the best location (either in its Small Business Division, or as a separate entity). This Cabinet is considered to be the best location for accessibility to businesses, especially new businesses, and probably would be able to gain the cooperation of other agencies. Another location under discussion is the Secretary of State's Office. The Secretary of State presently processes Article of Incorporation and does have limited computer capabilities. Continuity of the program, given the four-year turnover of this office, and the relationship of a constitutional office to regulatory agencies are concerns raised by this alternative. A final location under consideration is an independent office under the Secretary of Public Protection and Regulation. The major drawback of this alternative is the traditionally weak position of this Cabinet secretary, but, given the proper enabling legislation, this location could satisfy the Subcommittee's criteria.

The final aspect of the program that is unresolved is the funding. The most popular funding alternative is to earmark a percentage of the total state license receipts for this office. The percentage will be identified after a decision is made on the services to be offered and a fiscal note is done on that service level. That fiscal note will be compared to the total state license receipts and a percentage will be calculated. This funding mechanism is based upon the premise that this new office will relieve the regulatory agencies of a portion of their paperwork duties and therefore reduce the agencies' operating expenses. A second alternative is to fund the program directly out of the general fund, but the present economic situation makes this choice unlikely. The final funding possibility is to institute a surcharge on the master application. The same procedure that was followed in arriving at a fiscal note under the percentage method would be followed under this alternative. Once a fiscal note would be prepared, a surcharge in an amount sufficient to cover program costs would be implemented.

PRIVATE SECURITY PERSONNEL

Prepared by Yair Riback

Issue

Should the state license and regulate private security personnel?

Background

Private security personnel assume a growing share of protecting private property. Increasing crime rates and the large number of private properties have meant a proliferation of private security personnel, whose duties vary according to the nature of the property they protect.

While some larger companies may rely on "in-house" security forces, others might contract a proprietary security company. Security companies vary in size from one individual to agencies which employ a great number of people. It is estimated that Kentucky has about one hundred and twenty-five such companies and that the number of people involved in the security industry ranges anywhere from 8,000 to 10,000.

While there is great diversity in their duties and the nature of their services, they are all concerned primarily with crime prevention and detection rather than with crime investigation or apprehension. The same services are also commonly offered, for a fee, by off-duty public police officers.

At present, without licensing requirements, it remains up to the proprietary agencies, or those who wish to use their services, to screen, train or to set requirements.

Discussion

Data supporting a need to license and regulate the industry is skimpy.

A few isolated episodes of abuse and public endangerment and some hypothetical events have been mentioned. No information beyond that which was reported by the news media was represented to this committee. A national study (1977) also provided little such information.

While complaints and incidents of abuse do exist, it has not been established for this committee, how licensing could prevent such incidents and enhance public safety.

There are several sections of the Kentucky Revised Statutes which affect private security guards; among them are sections of KRS Chapters 61 (special peace officers), 431 (arrest by peace officers and private citizens), 527 (carrying concealed weapons), and 433.234-236 (shoplifting). In addition, guards are affected by the state tort laws; state and federal criminal law; general contract law; local government laws and regulations; and the state and federal constitutions.

Although there is no data about the frequency of improper use of force, shooting, detention, search, interrogation, or other abuses, it is evident from court litigations that illegal activities by security guards do present a problem both to them and to the public. There is no doubt, however, that only the more severe cases are litigated or come to public attention.

Among issues to be considered regarding security personnel are:

- Arrest Powers. Under present laws, their arrest powers are no greater than those of any other citizen.

- Detention of Suspects. Detention of suspects ranks high among incidents of litigated cases. Under Kentucky laws, guards may detain shoplifting suspects within retail establishments only.

- Ejection of Persons from Private Property.

- Limits on uses of force.

- Authority to question and interrogate suspects.

- Search of suspects.

- Public confusion with public police (impersonating police officers).

- Firearms. Under present laws, guards are allowed to carry unconcealed firearms like any other citizen. Performing security duties, however, adds the risks of accidental discharge, unwarranted shooting, mistaken identity, and harm to innocent bystanders, although few such incidents have been reported to this committee.

- Training. No formal training or experience is required of guards and it is up to employers to provide any training.

- Liability insurance. It is up to the individual guards or the proprietary companies to carry liability insurance. The State of Ohio, for example, requires liability coverage of $100,000 (per individual) and $300,000 (per occurrence), with premium rates of $500 to $650 per individual. The Kentucky security industry has recommended similar coverage. While it seems that liability requirements will not affect the fees charged by the larger proprietary companies, mandated liability insurance can affect smaller operators, and the policeman who performs security services during off-duty hours.

- Level of laws and regulations. The licensing and regulation of the industry can be done on the state or local levels. Two of the larger communities in the state (Louisville and Lexington) have already passed local ordinances to regulate the industry.

Several statutory provisions should be considered.

1. Licensing period.

2. Licensing fees, per individual and per company.

3. Liability and bonding requirements.

4. Personnel background check.

5. Grounds for permit denials.

6. Grounds for revocation of permits.

7. Complaint handling procedures and penalties.

8. Licensure requirements (age, education, experience, etc.)

9. Special powers (arrest and detention, interrogation, search, etc.)

10. Training and examination requirements.

11. Firearms permits.

Should the legislature decide to license and regulate the industry, the responsibility would have to be assigned to an administrative agency, possibly the Department of Justice, or a newly created regulatory board.

DUAL LICENSURE: BARBERS AND COSMETOLOGISTS

Prepared by Linda Carroll

Issue

Should the General Assembly establish educational reciprocity between schools of barbering and cosmetology for hours of instruction which are duplicated in training for the professions and thereby reduce the hours necessary for those desiring dual licensure?

Background

The Program Review and Investigations Committee, in its recent study of the boards of barbering and cosmetology, heard numerous complaints from members of the professions concerning the boards' traditional approach toward regulation. One recurring issue pertained to the requirement for separate regulation of professionals, despite the overlap in their training.

The practices of barbering and cosmetology are defined separately in KRS 317 and KRS 317A. The courses of instruction to be offered by both professions are set forth in KRS 317.540 and KRS 317A.090. Much of the required coursework for schools of barbering and cosmetology is very similar. However, the hours of training differ by 300 hours. Cosmetologists must have 1,800 hours of training before practicing and barbers must have 1,500. The 300-hour difference is attributed to the cosmetologists' separate training in manicuring, a skill not offered to barbers.

The curriculum requirements specified in the regulations for barbers and cosmetologists are divided into basically four areas: professional practices, sciences, basic coursework, and tools. The Program Review and Investigations Committee selected key terms which appeared in 201 KAR 12 and 201 KAR 14. Although identical terms may not have appeared in each set of regulations, the definitional value was found to be consistent in most areas. As one might expect, the barbering curriculum emphasizes such traditional areas as tools, haircutting and shaving. The cosmetologists concentrate more on hair coloring, shaping, manicuring and facials. However, a detailed comparison of each course required shows that sixty-nine percent of the curricula overlap, particularly in the areas which seem basic to the professions.

The pattern of similarities and differences is further reflected in the content analysis of the textbooks used in Kentucky barbering and cosmetology schools. In a detailed review of the <u>Standard Textbook of Cosmetology</u> and the <u>Standard Textbook of Professional Barber Styling</u>, it was found that fifty-eight percent of the skills were discussed in both books. The concepts which were discussed in only one or the other of the texts were peculiar to the traditionally exclusive male or female clientele.

Discussion

Barbering and cosmetology have evolved into highly similar professions in the last twenty years. Differences are maintained, however, by requiring separate licensure, separate instruction, and separate practice. The boards representing each of the professions feel that the separation is necessary because there are some unique qualities about the services provided by each group. Members of the professions, on the other hand, wish to provide all possible services to their clientele, thus being more competitive in the hair care industry.

An alternative to the current separation requirements confronting the small business individual is dual licensure. Dual licensure, simply stated, would grant licensure in both professions to those appropriately trained. Under current statutory and regulatory guidelines, dual licensure may be achieved only by completion of the full course of study in both professions. It would require 3300 hours of coursework.

If the boards were to determine those areas of training which are duplicative and establish a reciprocal agreement on the number of hours of training which need not be repeated, a person could attain dual licensure in a shorter period of time. Such a reciprocal agreement concerning a prescribed number of course hours would allow those interested the opportunity to obtain dual licensure in a reasonable period of time. In addition, it would not hamper the boards' efforts toward maintaining separation of the professions. Dual licensure which could be achieved in a reasonable amount of time, due to the recognition of some duplicative coursework, would permit professionals to practice together and assure training in all areas.

OTHER ISSUES RELATING TO BUSINESS ORGANIZATIONS AND PROFESSIONS

Tourism Development Districts

Issue

Should Kentucky enact legislation permitting the creation of "tourism development" districts?

Background

The tourism industry constitutes an important sector of Kentucky's economy. House Bill 670 was introduced in the 1982 General Assembly to assist local government with their tourism-related development. As originally proposed, HB 670 would have allowed local governments to designate tourism development districts and to levy a special license tax within those districts, would have provided several state tax abatements and would have allowed the Kentucky Development Finance Authority (KDFA) to make loans to tourism enterprises. A House amendment deleted the state tax abatements and KDFA loans, the bill passed the House, but it was defeated in the Senate. The Subcommittee on Business Regulations of the Interim Joint Committee on Business Organizations and Professions is presently considering such legislation.

The major concerns in tourism development district legislation are determining what initiatives should be offered and the statewide applicability of the program. The Subcommittee has expressed reservations about allowing tourism development districts to levy a special license tax, considering Kentucky's present proliferation of special districts. The granting of state tax abatements and low-interest loans are still under consideration.

The legislation that was proposed in 1982 would have limited tourism development districts to areas with a "developable attraction," either a natural attraction or a large man-made attraction, or a "demonstrable lack of tourism-supporting facilities," which generally would have been rural communities. Several areas that may not have qualified under these guidelines have since expressed an interest in this type of legislation and any proposal will probably apply statewide.

Eye Enucleation By Funeral Directors

Issue

Should funeral directors be trained and permitted to enucleate eyes for corneal transplants?

Background

Under Kentucky's Uniform Anatomical Gifts Act, a person 18 years of age or older and of sound mind may donate his body or any of its parts for research, education or transplantation. Donation may be done through a will, a signed, witnessed donor's card, such as supplied on the back of a driver's license, or by direction of the next of kin.

Tissue donated for transplantation must be removed with expediency in order for it to be usable, and special haste is needed for corneal tissue. Under Kentucky law removal must be performed by a physician, but not the attending physician. In many cases of potential donation, by the time permission is received and verified and a physician is found to perform the removal, the tissue has degenerated beyond use.

An exception to the requirement that tissue be excised by a physician is found in KRS 311.187, which allows coroners, medical examiners or qualified designees to remove corneal tissue for transplant in "coroner's cases," deaths caused by criminal acts or accidents, or involving unusual circumstances. This law is responsible for making more corneal tissue available for transplantation, but there is still a shortage of tissue and a rather lengthy wait for a transplant.

Several states have enacted legislation which permits properly trained funeral directors to enucleate eyes for corneal transplants. According to experts, the procedures for enucleating an eye are relatively simple and could quickly be taught to funeral directors. In addition, funeral directors are readily available upon death and have the facilities for performing the procedures. In states which permit this practice, the waiting period for corneal transplants has been shortened considerably.

The Subcommittee on Occupational Licensing of the Interim Joint Committee on Business Organizations and Professions is considering a similar law for Kentucky. The legislation would require that funeral directors be trained in a program approved by the department of ophthalmology of any accredited medical school. Such legislation has the support of the Kentucky Academy of Eye Physicians and Surgeons and other interests involved in corneal transplants.

Allocation of Stall Space at Thoroughbred Tracks

Issue

Should the state require Thoroughbred race tracks to establish written criteria for the allocation of stall space, giving preference to Kentucky residents?

Background

The four Thoroughbred race tracks issue stall space for horses at their respective tracks to those horsemen who will be racing their horses during racing meets conducted at the tracks. The stalls are desirable to horsemen because of their proximity to the track, access to training facilities and the "no charge" policy for potential competitors pursued by the tracks. The procedure for allocating stall space for horses has been the subject of numerous complaints of discrimination by horsemen. The underlying cause of the complaints on stall allocation is mathematical: the applications for stall space exceed the number of stalls available. As long as there are fewer stalls than applicants, a certain number of applications must be denied.

The issue of the manner in which stall space is allocated is one of conflicting interest. Owners and trainers are concerned with the limited number of stalls available at the Thoroughbred racing associations during racing meets, and the procedures utilized by the tracks in allocating those stalls to horsemen, which some say is done on an arbitrary basis. The racing associations, on the other hand, feel they must offer races which will attract the greatest number of patrons. In order to induce horsemen to race at their tracks, they provide stalls to those whose horses will be most competitive in the racing program devised by the track secretary.

In Kentucky, as in other states, the racing secretary at each track is responsible for the issuance of stalls for each racing meet. In granting stall space, the secretary will consider such factors as quality of horses, length of time an owner or trainer has raced horses at his track, and the number of horses for which stall space is requested. The necessity for a certain amount of flexibility in these decisions is apparent. However, some horsemen feel the tracks should establish written guidelines whereby the criteria for granting stall space would be more easily ascertainable by applicants for such stalls.

The procedure for allocating space has been a frequently recurring issue over the past several years. The racing associations steadfastly maintain that stall allocation is a matter that should be left to the discretion of the tracks, free from governmental dictates on what they consider to be internal policy decisions. However, certain Kentucky horsemen claim they are often unfairly discriminated against when their applications for stall space are denied, and feel that, as tax paying citizens of Kentucky, they should be given preference over non-resident horsemen for stall space at Kentucky tracks, if their horses meet the standards for the racing programs of the respective tracks.

Legislation was introduced in the 1982 Regular Session of the General

Assembly to address this problem but failed to pass. House Bill 338 would have required the racing associations to publish and file criteria for stall allocation with the Kentucky State Racing Commission. It further required the race tracks to give Kentucky horse owners and trainers preference over non-residents in instances where applications were substantially equal, but allocation of stall space for Kentucky owners and trainers was not to exceed seventy-five percent of stall space at the tracks. Senate Bill 376 would have required the racing associations to publish and file with the Racing Commission the criteria used in allocating or denying stalls to applicants.

The shortage of stall space is a problem common to all states where quality Thoroughbred racing is conducted. Any attempt to resolve the present dilemma should be given careful consideration to ensure the integrity of Thoroughbred racing in Kentucky.

Photographic Evidence

Issue

Should courts accept photographic evidence in theft cases in lieu of actual merchandise, so that merchandise will not be held for an inordinate amount of time?

Background

The Small Business Task Force is considering 84 BR 67, which would permit the use of photographic evidence in specified criminal proceedings.

In theft cases, courts currently require the actual property to be held as evidence. This practice is detrimental to retailers, whose merchandise can quickly lose its saleability if it is tied up in lengthy criminal proceedings. The situation also discourages some retailers from pursuing theft prosecutions. Moreover, it ties up court and law enforcement personnel and space.

Two concerns over this legislation that are still unresolved are adequate protection of the defendant's due process and the applicability of the proposal. As presently drafted, the bill allows a defendant's attorney to file a motion within fourteen days to require that the actual property be held. Some critics contend that this time period is too short. The bill was originally intended to apply only to retailers, but consideration is being given to extending the use of photographic evidence in any theft prosecution.

Prompt Payment Act

Issue

Should the state be required to pay outstanding accounts to vendors within twenty-five working days?

Background

Several states have enacted prompt-payment legislation to require their government agencies to pay vendors within a set period of time or risk paying interest penalties. The Small Business Task Force has favorably recommended 84 BR 55, which would require state agencies to pay vendors within twenty-five working days or face the payment of a 1% interest penalty.

The normal procedure in the private sector is that accounts are due within thirty calendar days or the delinquent party is assessed an interest penalty. This business practice has never applied to state agencies, however, and without any statutory guidelines on payments, some agencies have allowed bills to go unpaid for long periods of time. When such a delay occurs, it is especially burdensome on small business vendors, who lack the resources to carry delinquent accounts.

Under established guidelines, an agency forwards bills on purchased goods or services to the Finance and Administration Cabinet. That cabinet examines the account to ensure that purchasing guidelines were followed and then sends a payment voucher to the State Treasurer. The State Treasurer issues a check to the vendor. The bill (84 BR 55) acknowledges this system by establishing timeframes for the processing of the paperwork and defining the responsibility for the payment of any interest penalties.

The Composition of Boards of Barbering and Hairdressers and Cosmetologists

Issue

Should the General Assembly change the composition of the Boards of Hairdressers and Cosmetologists and Barbering to equally reflect all aspects of the professions?

Background

The statutory purpose of the boards of barbering and cosmetology is "to protect the health and safety of the public and to protect the public against misrepresentation, deceit or fraud in the practice or teaching of the profession." In order to accomplish these purposes the boards are granted the authority to adopt rules and regulations to govern the operation of schools, shops, and salons. The boards themselves have a specific composition, designated by statute, which is designed to represent all aspects of the profession.

The review of the boards' activities conducted by the Program Review and Investigations Committee identified an imbalance in the representation provided by the boards. The composition of the cosmetology board, as required by KRS 317A.030, is to have two members who own or have financial interest in salons, one cosmetology instruction, one with financial interest in a school, and one at-large member. No member is designated to serve as representative of the cosmetology practitioner, who comprises the largest percentage of the profession. Thus, the statutory composition of the board does not represent all areas of the profession. Furthermore, because the statutory language does not limit the membership to those who have financial interest in only one aspect of the profession, there is potential for even greater imbalance, particularly since the regular licensee is not represented.

In contrast to the cosmetology board, the barber board permits almost exclusive representation by the practitioner and disqualifies others in the field. The barber board statutes specifically disqualify anyone who has a financial interest in a barber school, who is an instructor, or who is affiliated with a wholesale barbering supplier. The structure of the board, established by KRS 317.430, includes two licensed barbers who are to represent organized unions, one barber who is not affiliated with a union, and one at-large member. There is no stipulation for the fifth member. This representation creates another sort of imbalance in the board's structure, by ignoring the schools and instructors.

Keeping in mind the statutory purpose of the boards, the Program Review and Investigations Committee recommended new structures for both boards. The structure which was recommended by the Committee and approved by the boards adequately resolves the imbalance which now exists in each board's structure.

The proposed new board structures are:

The Board of Hairdressers and Cosmetologists should be composed of:

(1) one salon operator;

(2) two practitioners;

(3) one school representative (owner or instructor); and

(4) one citizen-at-large.

The Board of Barbering should be composed of:

(1) two shop owners, who may be practitioners, with no financial interest in a school;

(2) one practitioner with no other interest in the profession;

(3) one KBA member; and

(4) one citizen-at-large with no interest in the profession.

Cities

MUNICIPAL TAXING AUTHORITY

Prepared by Jamie Franklin

Issue

Should the General Assembly consider constitutional and statutory expansion of the taxing authority of cities?

Background

The 1980 General Assembly enacted language which for the first time recognized the ability of cities to govern themselves in matters of a local nature. But, the "home rule" language failed to extend to cities specific authority to self-determine the nature, scope and maximum funding levels of municipal taxes. Current constitutional and statutory limitations relating to municipal finance have been under constant criticism from municipal officials, as unduly restrictive.

Discussion

Recent census data continues to illustrate the growth of Kentucky as an urban state. The percentage of Kentuckians residing in our cities is increasing and there has been an even greater percentage increase in municipal incorporations than in the preceding decade.

With such an increase in the urban populace, cities are being faced with demands for new and expanded levels of service. Additionally, cities are facing the costs of maintaining current service levels, the elimination of large sums of federal aids, especially for infrastructure maintenance, and the difficulty of current economic conditions.

As municipal officials look for ways to finance municipal government, constitutional and statutory limitations make it increasingly difficult for local tax revenues to cover even the most basic governmental functions. Limitations on local property taxes, prohibition of local sales taxes, and innovative methods of funding local services may have to be reviewed if Kentucky is to maintain a strong commitment of support to its cities.

MUNICIPAL PROPERTY VALUATION ASSESSMENT PROCEDURES

Prepared by Jamie Franklin

Issue

Should the General Assembly restructure the current municipal property assessment valuation procedure?

Background

The 1982 General Assembly postponed enactment of legislation which would have required cities to utilize county property assessment data or to create by ordinance their own property valuation assessment procedures. The proposed language also required county property valuation administrators (PVS's) to provide property assessment information to those cities utilizing such information at no cost.

The intent of the legislation was twofold. First, it attempted to encourage cities to utilize PVA-generated county assessment data by deleting the current costs (KRS 132.285) for such information. Secondly, it called for a uniform, statutory procedure for those cities which opted to develop their own property assessment valuation process.

Upon testimony of the Kentucky Department of Revenue, concern arose as to a possible budgetary shortfall which could consequently occur in the offices of the PVA's. The Department maintained that the withdrawal of municipal funds, used for deputies, office expenses, etc., could not be afforded, unless an equal sum should be appropriated at the state or county levels.

When delaying action on this issue, the related committees indicated a desire to more thoroughly review this issue during the 1982-83 interim.

Discussion

The procedures for municipal property valuation assessment are currently being reviewed by the Subcommittee on Municipal Finance of the Interim Joint Committee on Cities.

In-depth research, including extensive testimony by the Kentucky Revenue Cabinet, the Kentucky Municipal League and the Property Valuation Administrators Association, and a statewide user survey, has resulted in the emergence of three major points relating to this issue:

1. The actual number of cities with strong opposition to current procedures and costs is a relatively small number.

2. Many of the current points of opposition, such as the quality of and the acquisition process for PVA assessment data, could be resolved administratively by the enforcement of existing statutes and regula-

tions.

3. Cities may be paying a large, disproportionate share of PVA office costs, due to payment of the prescribed statutory fee for municipal property assessment data. This point is highlighted by the fact that many other taxing districts (such as schools and other special districts) utilize this information at no charge.

Further research addresses the ability of the state to assume total funding liability for PVA offices, which are technically state offices, and this research should be completed prior to legislative proposals in this area.

MUNICIPAL ANTITRUST IMMUNITY

Prepared by David Morris

Issue

Should the General Assembly enact legislation to immunize cities from federal antitrust liability.

Background

The federal Sherman Antitrust Act (15 U.S.C. Sec. 1 et. seq.) declares that it is illegal for any person to engage in any activity which results in a restraint of trade or business. The Supreme Court recognized in Parker v. Brown, 317 U.S. 341 (1943), that the state, in the exercise of its sovereign powers, is immune from liability under the antitrust laws. It has been generally assumed that local governments, as political subdivisions of the state, share the Parker doctrine immunity. However, in City of Lafayette v. Louisiana Power and Light Co., 435 U.S. 389 (1978), the Supreme Court rules that a local government is not automatically exempt under the antitrust laws and may be sued if its actions result in a restraint of trade. The state may extend its immunity to its local entities if it expresses a state policy to displace competition in a particular area with regulation or monopoly public service. There is a presumption against such displacement and it will only be recognized as a state policy if it is "clearly articulated and affirmatively expressed." [1]

The last blow to local government antitrust immunity came in Community Communications Co. v. City of Boulder, 455 U.S. 40 (1982), where the Supreme Court decided that the grant by the state of broad home rule powers is not sufficient articulation of state policy to displace competition to invoke the Parker immunity doctrine.

Cities and counties engage in a wide variety of activities which can potentially fall within the purview of the antitrust laws. Such activities including granting of franchises, such as those for Cable TV or public utilities; land use planning; exclusive contracts for such service provision as ambulances or garbage collection; or business regulation. Today with the spectre of antitrust liability over them, many local government officials are fearful of the consequences of performing what have always been traditional governmental functions.

Regardless of the ultimate decision, antitrust cases pose a significant threat to local government treasuries. Even if the city or county ultimately wins, the costs of defending an antitrust case can be astronomical. As one city official said, "We can't afford to win these cases, much less lose them." [2] If the local jurisdiction does lose, not only is it liable for damages sustained, but it may be required to pay treble damages and the plaintiff's attorney fees.

Discussion

The municipal antitrust doctrine developed by City of Lafayette and Boulder presents a series of questions to the General Assembly. First, should the General Assembly extend state immunity to local governments? Opponents of local immunity question the wisdom of permitting local entities to create monopolies, give economic advantages to certain business and otherwise inject themselves into the economy. Opponents agree with the court in Lafayette, which expressed the fear that "serious economic dislocations...could result if cities were free to place their own parochial interests above the Nation's economic goals reflected in the antitrust laws." [3]

Proponents of continuing to immunize local governments point out that business regulation, franchising and licensing are some of the primary responsibilities of local governments and that "local officials must be able to perform traditional governmental functions which are in the public interest free of the paralyzing fear of antitrust liability." [4]

If the determination is made that it should be state policy that local government actions are immune from antitrust liability, it must then be determined: to what extent? and in what manner?

The Supreme Court has offered scant guidance to legislatures. Essentially all that is clear is that the state must make a clear articulation and affirmative expression of state policy to displace competition with regulation or monopoly public service. The implication of Boulder is, further, that an attempt at a blanket immunity will not be effective, but that the appropriate expression of intent must be specifically related to the activity. The problem caused by this requirement is that it would seem to place cities and counties back where they were before home rule -- having to request legislative approval of every activity. The task faced by the General Assembly then will be to achieve a balance between the maximum immunity and the minimum dilution of home rule authority.

Footnotes

1. City of Lafayette, supra, at 410.

2. National Journal, "Cities and Counties Ask Congress: 'Save Us from the Anti-trust Laws'", March 12, 1983, at 559.

3. City of Lafayette, supra, at 413.

4. National Journal, supra, at 558.

RESTORING URBAN NEIGHBORHOODS

Issue

Should the state encourage the rehabilitation of older urban neighborhoods?

Background

Urban decay is a problem for all of Kentucky's urban areas. Some of Kentucky's greatest resources are currently being under-utilized and thus are subject to decay and blight, at a tremendous cost to the public treasury.

Urban areas have streets, sewers, water lines, gas and electric service, and a high level of government service. Their housing stock is plentiful and diverse, though frequently in questionable condition, but while Kentucky has more people than ever in its metropolitan and urbanized areas, it has far fewer people living in its older cities. Because of suburban migration, the financial health of our cities is poor.

To reverse the decline of urban areas, there is a need to attract people to live in the city, people who will maintain their property, participate in local government, more fully utilize the existing infrastructure and public services, contribute to the city's tax base and create a market for business activity. To do that, the older housing stock in our central cities must be rehabilitated and modernized. Unfortunately as things stand now, it is generally more difficult to buy and rehabilitate an older house than to build or buy a new house. Newer houses can be purchased with lower down payments, and for lower monthly payments. Few home builders are active in the rehabilitation field; the supply of rehabilitated housing is short. The selection, construction, and financing of the rehabilitation project is difficult.

There are many ideas concerning how redevelopment can be encouraged, but most may be classified into two broad categories: schemes to attract private capital back to urban areas so that owners or investors can rehabilitate properties, and schemes to ensure that urban neighborhoods are attractive and safe so that people will want to live in them.

Counties

ADJUSTING COUNTY OFFICIALS' COMPENSATION

Prepared by William Wiley

Issue

Should the General Assembly amend procedures for establishing and adjusting county officials' compensation?

Background

Section 161 of Kentucky's Constitution states that the compensation of a county officer shall not be changed after his election or appointment, or during his term of office. KRS 64.530 carries this constitutional mandate further by requiring that the compensation of an elected county official be set before the first Monday in May of the year of his election, and not changed during his term of office. The Court of Appeals, in Commonwealth v. Hesch, Ky. 395 S.W. 2d 362 (1965), extended the "rubber dollar" principle to local government, and stated that local government officials could be given cost-of-living raises during their terms of office, "for on the theory of construction we have adopted, the salaries of the various offices are merely being kept abreast of their initial value or purchasing power." The application of the principle of the rubber dollar to county officials' compensation has been enacted into law several times, most recently codified as KRS 64.527.

KRS 64.527 states that the finance and administration cabinet should compute annually the increase in the consumer price index, and should notify the appropriate governing body. The computed figure is the adjusted maximum compensation which the constitution will allow. Upon notification, that governing body "may set the annual compensation...at a rate not greater than that stipulated by the finance and administration cabinet."

The court, in Commonwealth v. Hesch, upheld a legislative act which increased the salaries of county officials during their terms by a figure almost exactly equivalent to the increase in the consumer price index. The language of KRS 64.527 could lead one to believe that the General Assembly approved of raises during a term of office which might exceed increases in the consumer price index. This in fact has occurred, as when the members of the fiscal court in one county increased the salary of the coroner from $2,400 to $22,800, and their own salaries from $8,000 to $20,000. The Attorney General, in at least two opinions, (82 OAG 16 and 82 OAG 348) has advised that such raises are legal, and characterizes them as "adjustments" rather than "changes" in compensation.

Discussion

We have moved from the statement in the Constitution that a county official's compensation could not be changed during his term of office to the position that any change is legal, so long as it does not exceed the constitutional maximum for the office, as adjusted for increases in the consumer price index.

The court, in Commonwealth v. Hesch, did not say that it was permissible to do more than keep salaries abreast of their initial value or purchasing value. The General Assembly, because of the wording in KRS 64.527, has not explicitly limited raises to amounts which would merely keep salaries abreast of their initial value. The Attorney General has explicitly approved of raising salaries to levels which exceed their initial value. In so doing he has characterized such raises as "adjustments" rather than "changes."

If a county official's initial salary were $5,000, and the consumer price index rose by 10%, then a salary increase of 10%, to $5,500, would maintain the original purchasing power. This would be an "adjustment" of dollars, but not "change" in purchasing power. If, in the same case, the salary were increased to $10,000, the new purchasing power would be $9,000 instead of the original $5,000. (The initial value of the dollar had decreased to ninety cents, and ninety cents multiplied by $10,000 yields $9,000 of purchasing power). Thus this would be both an "adjustment" in dollars, and a real "change" in purchasing power. Such an increase would seem to violate Section 161 of the Constitution, and operate outside the scope of what the Court of Appeals upheld in Commonwealth v. Hesch.

It is clear that the constitutional prohibition against change in compensation for a county official during the term of office is no longer operative. This is not the result of legislative action alone; but legislation can be enacted to retain the principle of the constitution yet allow for changes in actual living costs.

INCREASING STATE SUPPORT OF SHERIFFS' OFFICES

Prepared by William Wiley

Issue

Should the General Assembly strengthen financing, staffing and training in sheriffs' offices?

Background

The sheriff is one of the two remaining fee officers in county government. He provides three basic services: tax collection, service of legal process for the courts, and law enforcement for the county. For the first two services, the sheriff is compensated by commissions and fees. For law enforcement, except for certain arrest fees, the sheriff is basically uncompensated. He does receive a $3,600 expense allowance from the state, which is linked to his statutory duty to patrol county roads. Otherwise the sheriff must pay for law enforcement out of commissions and fees for other services. Most sheriffs earn in excess of 60% of their income from tax commissions. In 1982, sheriffs were given statutory authority to invest idle tax dollars in their possession. The extent to which investment earnings will add to the sheriff's income has not been determined.

The sheriff may ask the fiscal court for appropriations to fund law enforcement activities, but there are two factors which may limit this source of revenues. In smaller counties, the fiscal court simply may not have sufficient funds. But even if there are sufficient funds, the fiscal court may view the sheriff as an independently elected officer, responsible for his own funding. Such a determination may be influenced by political factors. Since the sheriff cannot be re-elected to his office, he may be viewed by other county officials as a future competitor for their offices, especially where political factions are strong.

Some sheriffs fare well financially under the fee system, some get by, and some simply do not earn sufficient revenues to provide adequate service. The determining factor is the tax base of the county. If tax commissions are not sufficient, law enforcement services will not be provided. There is a very strong statistical correlation between the assessed property value in the counties and the number of deputies hired.

There are at least twenty-eight counties of low population and assessed value which have fewer than three deputies, including those assigned to tax collection duties. When sheriffs have so few deputies they cannot afford the staff time or the money to send deputies for training. Further, there is little incentive for deputies to complete the Law Enforcement Foundation Program Training, since, unlike city police officers, they are not eligible for the state salary supplement.

The sheriff's own compensation is also related to the tax base. If tax commissions and other fee income are sufficient, the sheriff may take the maximum compensation that the constitution will allow. In 1980, this maximum was $23,184. In those fifty-seven counties, excluding Jefferson County, where the sheriff made his maximum, the average assessed value was $419 million. In those forty-one counties where the sheriff did not make the maximum, the average assessed value was only $123 million. (Audited data was not available for all counties.)

Discussion

Solution of the financial difficulties of sheriffs' in Kentucky's smaller counties is dependent upon several factors. The first is finding additional money, which involves deciding who should pay it. A second factor is the lack of continuity in the office of sheriff, which impedes training and maintaining sheriffs and deputies who are experienced in law enforcement.

Many Kentucky counties have determined that the sheriff's services to the county are important, as evidenced by appropriations from the county budget. Some of these counties have entered fee pooling arrangements whereby all of the sheriffs fees and commissions are paid to the county treasury, and the salaries and expenses of the sheriff's office are made a part of the county budget.

If the county is unable or unwilling to subsidize the functions of the sheriff, the next obvious choice is subsidy by the state. Whether the state should finance county sheriffs should not be viewed as merely an ideological question. The state already provides a $3,600 expense allowance, and the state heavily subsidizes the operation of county jails. The question is rather whether the General Assembly wants to divert scarce resources from other uses to sheriffs' departments. The Sheriffs Association has suggested two forms such could take. First would be the guarantee of at least two deputies in each county; second would be state-financed training for those deputies.

The question of training raises the question of continuity in office. Constitutionally, sheriffs may not succeed themselves in office; neither may they serve as deputies in the succeeding term. In many counties the deputies go with the sheriff. They help in his election, and when his term is over they leave, unless one of them is successful in seeking the office himself. A training program for sheriffs and their deputies will not be as economical as a training program for other peace officers, because the sheriffs and their deputies are less likely to be career law enforcement officers.

Establishing continuity and professionalism in the law enforcement efforts of the sheriffs is one argument for amending the constitution to permit sheriffs to succeed themselves. Another argument, with which the sheriffs almost unanimously agree, is that, if they could succeed themselves in office, they would be on equal footing with other county officers when negotiating for support from the fiscal courts. One could just as easily suggest that the county law enforcement officer should not be elected anyway, but should be appointed, as city police chiefs are appointed. In fact, many counties now have county police forces, which further complicates the question of funding for the sheriffs.

Whatever the merits or potential success of a succession amendment, the sheriffs have made it their primary legislative goal for 1984. They feel that if they can achieve this goal, the solutions to their financing, staffing and training problems will fall into place. Should the General Assembly pass a succession amendment and the electorate ratify it, sheriffs will tend to remain in office longer, and law enforcement professionalism will be enhanced. Should the succession effort fail, as it has in the past, the succeeding General Assembly will have to find ways to assist and professionalize the office of sheriff while working around the succession problem.

GROWING PRISON AND JAIL POPULATIONS

Prepared by Prentice Harvey

Issue

What action should the General Assembly take to deal with increases in prison and jail populations?

Background

According to Corrections Cabinet data, both prison and jail populations are on the increase in Kentucky. The state's current prison population stands at about 4,500 prisoners, an increase of approximately twenty percent over the past two to three years. The absence of good historical data makes estimates of the rate of change of jail populations difficult, but it is thought that the current county jail average daily population of 3,900 represents a sizeable increase over past years.

At the same time the numbers of prisoners are growing, several factors limit the ability of the prison and jail systems to absorb this growth. The terms of a federal consent decree set a cap on the population of portions of the state prison system. Because of this population cap, there has been some backup in the county jails of convicted felons awaiting intake into the state prison system. At the same time, the enforcement of jail standards relating to life and safety conditions has caused the closing of several county jails. A further reduction in the capacity of the jail system can be expected in July, 1983, as state jail standards setting minimum square footage requirements per prisoner come into effect, bringing the state's jails into conformity with federal law.

These limits on the prison jail systems occur at a time when public attitudes seem to be pressing for longer sentences for convicted criminals. The perceived public attitude has led to the enactment of stiffer penalties for various offenses, and prosecutors, judges and juries are reportedly placing longer terms on the convicted.

Discussion

There are several available alternatives for dealing with population pressures in state and county correctional systems. One alternative is construction of new facilities. New prison and jail construction is, however, an expensive undertaking; probable ranges for new prison and jail beds are from $20,000 to $50,000, depending on the type of facility. This cost warrants close examination of the need for new prisons. In regard to the jail system, the 1982 General Assembly set up a fund to assist counties with jail construction but the amounts available may not meet the new construction needs of the antiquated jail system. Increasing attention may also be given to ways of better coordinating the prison and jail systems. This alternative might include use of some county facilities for the housing of minimum security felons.

Other states have begun to review the use of prison and jail beds. In short, these states have come to view correctional facility space as a scarce resource and are seeking means of reserving this space for only the most serious criminals. In some cases, diversion and mediation programs are used to avoid adjudication and incarceration entirely. In other cases, restitution, community service and greater use of fines are employed to hold down jail and prison populations.

COUNTY JAIL FUNDING

Prepared by Prentice Harvey

Issue

Should the General Assembly revise the method of assisting counties with jail operational costs?

Background

The 1982 General Assembly enacted legislation which abolished the fee system for reimbursing counties for holding state prisoners in county jails. In place of the fee system, the General Assembly set up an interim method of distributing state monies for jails. For FY 83 and FY 84 this funding system sends to each county an amount equal to that realized under the fee system in FY 81 plus an additional amount based on the number of permanent beds in the county's jail. The legislature inserted a sunset clause in this funding provision, repealing it effective July 15, 1984.

Kentucky state government supplements the funding of jail operations much more than other states with similar jail systems, contributing more than $11 million to such operations. These funds count for more than one half of all the money spent on jail operations. Many county officials complain, however, that jail expenses are a severe and undue burden on county budgets. This complaint may be more valid for some county officials than for others because many inequities in funding developed under the fee system. For example, some counties are able to operate their jails entirely with state funds, while in other counties more than seventy percent of jail operating funds may be from the county general fund.

The issue of jail funding will become even more crucial as the enforcement of jail standards raises the expense of jail operations in some counties. The jail standards, which were promulgated to help bring Kentucky's jails into conformity with federal law and to protect county officials from legal liability, are likely to raise personnel and other costs for many county jails.

Discussion

Several different approaches to jail funding are possible. One method is simply a percentage split. One unit of government's spending for jails could serve as a base and the other unit (either the state or county) could be required to match this base up to a certain amount.

Another method would be to distribute state funds for county jails based on a formula of some sort. Other states are now using various formulas. Some of these formulas are geared toward determining the demand for local corrections by allotting proportionately more state money to localities with high crime rates or high percentages of persons in high crime risk age groups. Other states seek to equalize local corrections resources by giving more corrections funding to economically weaker counties.

OTHER COUNTY ISSUES

General Fiscal Management

Issue

Should the General Assembly modernize the statutes which govern the general management of public funds by county officials?

Background

The following is a discussion of three aspects of the management of public funds by county officials. Improvements in any or all could reduce the cost of audits, improve local financial management and provide the General Assembly with dependable county fiscal data.

Training - the Department for Local Government is mandated by statute to provide five regional seminars each year to instruct county officials in fiscal management techniques and requirements. The state local finance officer and his staff, currently in the Finance and Administration Cabinet, act as instructors for these seminars but are not required to be involved in curriculum development and course planning. Since the state local finance officer provides mandatory fiscal oversight of county officials, it might be more efficient if a cooperative training program were mandated, or the training and oversight functions were placed in the same agency.

Reporting - county officials are required to submit financial reports to the state local finance officer within certain time periods every year. Some officials do not report at all, some file incomplete reports and some file late reports. The current penalty for noncompliance is a small fine. A substantial increase in the amount of the fine might emphasize the importance of accurate and prompt reporting by county officials and improve the quality of fiscal oversight by the state local finance officer.

Budget Design - counties are required to use the Uniform System of Accounts, as determined by statute and the state local finance officer. The system has undergone minor revisions in response to legislative changes, but many obsolete sections remain. As time passes, the system has become less capable of incorporating new or amended revenue and expenditure categories.

Current law does not require the state local finance officer to periodically revise the Uniform System of Accounts. Counties are thus locked into a system which is less flexible each fiscal year and which is not designed to be translated into a computerized system.

If the state local finance officer were required to review and revise, when necessary, the Uniform System of Accounts after each General Assembly session, the system would remain current.

Medical Care in Jails

Issue

Should the funding for indigent medical care of jail prisoners be changed from a per-treatment reimbursement approach to a medical care contract cost-sharing approach?

Background

Federal jail standards and recent federal court decisions, including one against Campbell County Jail in Kentucky, are based upon the premise that persons detained in jail must have certain basic needs provided for while incarcerated. One of these is the provision of medical care. Numerous federal court suits across the nation have resulted in findings against the adequacy of medical care in local jails. The result has been court-imposed standards which have proven extremely costly. In Campbell County, the cost of federal court-imposed standards is estimated to have cost more than $80,000.

At a minimum, federal court standards indicate the need for medical care comparable to that offered the general public, regular doctor visitation hours, 24-hour emergency services, medically trained jail staff, the maintaining of medical records, the administering of intake medical exams, and following prescription drug procedures.

Kentucky has historically left responsibility for jails to local governments. The cost of maintaining these facilities has become a heavy burden upon local governments, however. With the imposition in 1983 of new state standards, many facilities have had to close. Financial responsibility for medical care in jails has been split since 1979 between the state and the local government. Under HB 50, codified as KRS 441.010, the state pays for emergency indigent medical care. Other care is the responsibility of either the local government or the prisoner.

HB 50 established a per-treatment reimbursement program administered by the Department of Finance. Reimbursement was to be paid only for treatment certified as an emergency by a physician. Most counties have used the program with restraint. Counties where the fear of a federal suit is high have found the law ambiguous enough to allow for the reimbursement of what is actually routine medical service. In a few counties routine doctor visits are paid for on a per-inmate basis, resulting in extremely high costs.

As written, KRS 441.010 only allows for reimbursement on a per-indigent-inmate basis. Indigency is hard to determine and federal law does not recognize a distinction in the type of prisoner to be served. An acceptable medical program must serve all. In many cases, especially with larger counties, a medical contract for the provision of routine services would be the most cost effective. This has been the finding in Fayette County, where a contract with the local health department provides for the basic medical care services outlined by federal standards and newly adopted state standards.

In 1981 the Program Review and Investigations Committee adopted a recommendation that KRS 441.010 be amended to permit the state to pay a portion of the cost of contract medical services which would comply with the proposed state standards. The Committee also recommended that local health departments be utilized for the provision of those services whenever possible. To allow for the smaller counties, a per service reimbursement ought to be maintained for those jails in which that approach would be most cost-effective.

Education

EDUCATIONAL FUNDING

Prepared by Janie L. Jones

Issue

Should the current structure for funding elementary and secondary education by changed?

Background

Although educational finance is always an issue, it becomes a greater one in a prolonged period of declining revenues. A series of state and federal budget cuts and a reluctance by citizens at the local level to approve new taxes have resulted in a reduction in the number of teachers, programs, and services in many districts. At the same time, improving the state's educational system has been listed as a top priority throughout the state and program requirements are being increased for graduation from high school as well as for entrance to college. In addition, attention is being focused on the high school dropout and the graduate who cannot read or write.

Discussion

If the existing system of education in Kentucky is to be upgraded, some method of funding improvements must be found or a method devised for more efficient use of available funds.

Since the passage of HB 44, placing a cap on the local property tax that can be collected without voters' approval, bills have been introduced each session to circumvent the provisions of that bill. However, the General Assembly has been unwilling to approve a bill that would allow an increase in taxes without voter approval.

During the 1982-83 interim, the Department of Education established a Commission for State School Finance to develop recommendations on various aspects of school funding. Two areas on which this commission has spent a great deal of time and on which it is expected to make recommendations are:

1. Requiring small independent districts to study merger with county districts. However, any attempt to merge school districts usually creates a great deal of opposition and its success would require considerable evidence of financial and academic benefits.

2. Use of a weighted pupil unit formula for foundation program fund allocations. In 1974, SB 280 established a weighted pupil unit that was implemented in 1975-76 but was repealed by the General Assembly in 1976. In 1979, a subcommittee of the Governor's Task Force on Education studied the weighted pupil method of funding. Any proponents of reinstating this method should pay particular attention to the problems encountered in 1975-76.

KENTUCKY TEACHERS' RETIREMENT SYSTEM

Prepared by Sandy Deaton and Herb Franklin

Issue

Should there be new legislation to increase the benefits in the Kentucky Teacher Retirement System when previous provisions have not been adequately funded?

Background

The 1980 General Assembly, in an effort to create an incentive to reduce teacher absenteeism, passed legislation to permit school districts to make special payments to retirees for their accrued sick leave. At the present time there is no available data to show whether absenteeism has been reduced.

During the 1980-82 biennium, a total of 698 retiring teachers received credit for their unused sick leave, creating an unfunded debt to the system of $2,784,122. The 1982 General Assembly made provisions to fund the liability that occurs during the 1982-84 biennium from surplus in the KTRS 1982-84 budget appropriation and any remaining balance will be included in the 1984-86 appropriation.

Discussion

Members of the Kentucky Teachers' Retirement System (KTRS) may retire with full benefits after thirty years' service--a provision which is comparable to those of the Commonwealth's other retirement systems, excluding the state police system. Legislation passed by the 1982 General Assembly allows members to retire now with twenty-seven, twenty-eight, or twenty-nine years service, but with reduced benefits.

The teachers' major professional organization and others have proposed two major legislative changes by the 1984 session of the General Assembly which will affect the KTRS. One proposal seeks to reduce the required years of service for retirement with full benefits from thirty to twenty-five, and a second proposal would mandate that all school districts compensate teachers for each unused sick leave day at the time of retirement.

Proponents of the twenty-five year provision suggest that such legislation is needed to combat teacher "burnout," a result of teacher stress, and to help attract and retain excellent teachers. The cost of such a change is estimated to be five and one-half to six million dollars per year. The cost of mandating compensation for accrued sick leave could be as much as five million dollars per year.

The General Assembly, in considering such proposed legislation, must consider the following questions:

1. Would these programs actually have the effect of reducing teacher absenteeism and "burnout," as well as attracting and retaining more qualified teachers, or could these goals be accomplished with better teacher support systems, incentive pay plans or other ways of improving working conditions for teachers?

2. What effect will new benefits have on the present and future actuarial status of the KTRS?

3. Would the costs of new benefits divert available funds from benefit improvements for members who retired with thirty years' service?

Before any alterations are made in the KTRS, the Legislature should be aware that KTRS is a very complex and technical system and that much attention should be given to its financial soundness. Only an actuary can ascertain the effect of liberalizations; such an expert should be consulted before amendments are enacted.

STUDENT COMPETENCIES

Prepared by Herb Franklin

Issue

Should greater emphasis be given to the identification of student competencies of Kentucky youth?

Background

"The Educational Improvement Act of 1978" was intended to assure the right of each student in the public schools of Kentucky to acquire the basic knowledge and learning skills essential for completing high school, pursuing a course of study in postsecondary education, or entering the workforce of our society. To accomplish this, the Act provided for measuring student progress and achievement in the basic skills in grades 3, 5, 7 and 10. Further, the Act required, based on test results, that appropriate remedial education programs be developed to address identified educational weaknesses in grades 4, 6, 8 and 11. The programs are to continue into upper grades and be reviewed and updated annually. No provisions were made for private schools under this Act.

Discussion

Although the Educational Improvement Act provides for student testing and program development to address identified educational weaknesses of public school youth, tenth graders across the state do not fare as well on the tests as do tenth graders nationally. It should be noted that funding for the Act in its first biennium was for both testing and remedial program development. Since that time only the testing portion continues to be funded. These funds are not available to private schools. However, some are available from Chapter 2 funds for testing, should private schools choose to use them.

Worthy of review at this time is the dropout rate in grades 7-12 in Kentucky schools. Records show an annualized rate for each of these grades of 5.86% to 5.15% from 1978 to 1982. This means that approximately 35% (1978-79) to 31% (1981-1982) of the children entering the 7th grade did not complete the 12th. (The dropout rate since 1978 has declined slightly.)

This discussion raises some questions. Among them are:

(1) Should the state provide funding for remedial education?

(2) Should private school students be tested by the state?

(3) How well are local districts providing remedial education?

(4) Would a good statewide remedial education program further reduce the dropout rate in grades 7-12?

GIFTED AND TALENTED PROGRAMS

Prepared by Joe Fiala

Issue

Should gifted and talented education programs continue to be funded as experimental programs or should they be funded as Foundation Program units?

Background

Education for exceptional children is recognized as a need at both the federal and state levels. Federal laws include the gifted and talented child as one end of the spectrum of children needing specialized programs. Originally, gifted and talented children were included in the Kentucky definition of "exceptional." However, legislation in 1974 removed gifted and talented from the Kentucky definition.

In 1978 legislation was adopted in Kentucky which established an experimental program for the education of gifted and talented children, those children

> who possess demonstrated abilities or measured potential that provides evidence of high potential or that provides evidence of high performance capabilties in any of the following: intellectual ability, specific academic aptitude, creative or productive thinking, leadership ability, and visual and performing arts.

Department of Education guidelines limit the number of gifted and talented students to five precent per grade.

Generally gifted children possess a number of characteristics which set them apart from other children:

- they deal at higher levels of abstraction;
- they remember more and retrieve from memory more easily and more quickly;
- they function at higher cognitive levels then their peers;
- they seek out challenge;
- they develop basic learning skills earlier; and
- they are better able to solve problems.

Talented children are those who may not be gifted but who exhibit advanced skills and abilities in particular areas, usually the arts and music. These characteristics require a different educational environment than the traditional classroom.

The traditional classroom, because of its size and mixture of ability levels and needs, provides a more structured and less individualized environment than that befitting gifted children. The pace is slower. At the elementary grade levels gifted children need to have more difficult and more quickly presented information. Otherwise they are bored. They also need to exercise their advanced creative and problem solving abilities and need to be free to pursue many different areas of interest. At the middle school levels gifted children benefit from greater cultural and literary exposure. They also benefit from development of their communication and research skills. At the high school grade levels gifted children need the opportunity for a greater variety of courses and more advanced courses related to their areas of interest and career aspirations.

Failure to provide programming for gifted and talented children is thought by many experts to be detrimental to these children. Lack of motivation, underachievement, low self-esteem, high dropout and suicide rates, and undeveloped potential are all results attributed to the failure to provide gifted and talented children with special programming.

Under the experimental program established in 1978, sixty-five school districts in Kentucky are now operating state approved programs. One hundred and six districts have received funding to plan programs for the 1983-84 school year. The Kentucky General Assembly has increased the funding for the experimental program from $3.2 million in the 1980-82 biennium to $7.2 million in the 1982-84 biennium. The Department of Education has adopted a new approach to allocating these funds. Originally funding was distributed through a competitive grant approach. Beginning in 1983, all districts will be eligible for funding. It will be based upon their enrollment size, according to the following schedule:

Enrollment	# Units	Amount
5,800 and above	3	$58,500
5,799 to 2,750	2	$39,000
2,749 to 750	1	$19,500
750 and below	.5	$ 9,750

The "experimental program," as implemented by the Department of Education, has placed less emphasis on a centrally coordinated effort to develop, evaluate and identify model program approaches than would seem to be called for by the objectives of Kentucky's 10-Year Plan for Gifted and Talented Education. Instead, the Department has chosen to allow the development of numerous individualized approaches without any centralized evaluation effort. Gradually the Department has modified program guidelines to provide statewide funding for programming in all 180 school districts.

Given the Department of Education's gradual change in the orientation of the program, and given the growing political pressures from parents and parent organizations, the incorporation of gifted education into the mainstream of Kentucky's educational programming is an issue to be resolved. Three options exist for the General Assembly. The program could be discontinued; it could continue as "experimental"; or it could be funded through the general educational funding mechanism, the Foundation Program.

Discontinuing the program would, in many districts, eliminate special programs for gifted and talented students.

Continuing the current experimental program would do one of two things, depending upon how it was implemented. If it were implemented as proposed by the Department for 1983-84, the program would provide limited funding based upon a formula which disproportionately favors smaller school districts. Furthermore, the experimental designation would tend to perpetuate an attitude among school districts that the program is only tentative or temporary, thus reducing the districts' willingness to commit resources and personnel.

Maintaining the experimental designation for another biennium and requiring a major evaluation effort, possibly conducted through a special task force, could provide the means of establishing a more coordinated and effective program. Such an evaluation, aimed at identifying funding needs, program approaches and curriculum materials, would potentially increase the effectiveness of the overall program. Currently the goals and purposes of the program are extremely broad and ambiguous. The lack of a clear direction and the lack of information on effective programming place many districts in the position of "reinventing the wheel" each time a new program is developed. This leads to a lot of duplicated effort and wasted monies, which a more coordinated and centrally directed effort of identifying successes and failures could prevent.

Finally, the General Assembly could incorporate the program as part of the standard school curriculum and fund gifted and talented programs through the standard Foundation Program unit formula, which allots a set amount of funds each year for teacher salaries, current expenses and capital outlay. This approach would eliminate the reluctance of districts to commit themselves to a temporary program and would establish a clear policy as to the need for providing services. The question of what percentage or strata of students to be served and the cost for providing services would need to be studied.

The following program cost estimates are based on a 3% and 5% incidence of gifted pupils and allotting units of 50 and 75 pupils in average daily attendance.

Estimated % of Gifted Pupils	Estimated Total No. of Pupils in ADA 1983-84[1]	Total Number of Gifted Pupils	Number of Pupils Per Unit	Number of Units	Estimated Average Cost Of Unit 1984-85[2]	Estimated Total Cost of Program 1984-85
3%	606,690	18,189	50	364	$27,214	$ 9,905,896
3%	606,690	18,189	75	243	$27,214	$ 6,613,002
5%	606,690	30,335	50	607	$27,214	$16,518,898
5%	606,690	30,335	75	404	$27,214	$10,994,456

1 Department of Education estimates.
2 Per unit estimated cost based on a Department of Education estimate of $25,198 cost for 1983-84, with an 8% increase for 1984-85 (costs increased 8% from 1982-83 to 1983-84).

FINANCIAL MANAGEMENT OF UNIVERSITY AFFILIATED CORPORATIONS

Prepared by Brent Neiser and Sheila Mason

Issue

Should university affiliated corporations (foundations) be required to follow the financial management procedures outlined in HB 622, enacted by the 1982 General Assembly (codified as KRS 164A.555-164A.630)?

Background

According to HB 622, an affiliated corporation (foundation) means a corporate entity which is not a public agency and which is organized pursuant to the provisions of KRS Chapter 273, over which an institution exercises effective control by means of appointments to its board of directors, and which could not exist or effectively operate in the absence of substantial assistance from an institution.

Prior to the enactment of HB 622 the legal status or regulation of foundations was indirect and controlled primarily by KRS Chapter 273, the Non-profit Corporation chapter. University foundations were under no guidelines for providing consistent and uniform information regarding financial reports, audits or other business activities.

The passage of House Bill 622 brought some stability and consistency to information provided by university affiliated corporations in the areas of annual financial reports, scope of audits, adherance to accounting principles, purchasing requirements, and indirect expenses. Under the provisions of KRS 164A.560 (HB 622) and according to the interpretation provided by OAG 82-520, universities have the option of including their affiliated corporations under some or all of the provisions of HB 622.

Discussion

Two alternatives are available regarding the financial management procedures of university affiliated corporations. The first is to leave the provisions of HB 622 optional (as they currently stand). This would mean that only the state universities that have elected to operate under the provisions of HB 622 would be providing standardized and complete financial information for their affiliated corporations. Other universities not under the requirements of HB 622 would not be required to produce such information.

The second alternative is requiring that university affiliated corporations comply with the provisions of HB 622, as recommended by the 1983 Program Review and Investigations Committee in their University Affiliated and Non-Affiliated Corporations study. This alternative would provide consistent treatment and oversight by appropriate review bodies of affiliated corporations.

OTHER EDUCATION ISSUES

Reduction in Force

Issue

Should the reduction in force statute be expanded?

Background

The reduction in force statute presently allows the local board of education to suspend teacher contracts when enrollment decreases or schools are suspended or territorial changes are made. It has been suggested that anticipated reduction in revenue be added as a condition for allowing a reduction in force. Currently, the board suspends contracts in the teaching field affected, with preference given to teachers on continuing contracts and to teachers with greater seniority, but "teaching field" and "seniority" are not defined.

One proposal is to allow the board to suspend a non-tenured teacher's contract rather than simply not renew it and to include such a teacher on a seniority list for callback, with no break in seniority. Another suggestion is to allow a teacher to displace or bump any teacher with lesser seniority in any area in which the former has greater seniority. Another possible expansion is to establish a district seniority list which would include the name, area(s) of certification and ranking by seniority of each teacher, including those whose contracts are suspended.

Teacher Competency Tests

Issue

Should the state mandate a competency test and internship for new teachers?

Background

As of late 1982, twenty-eight states had legislative or state department of education mandates for competency assessment programs, and nine additional states were considering such action. Such action is one response to public concern over the quality of education in the public schools and is an attempt to assure that qualified teachers staff the classrooms.

Representatives of education interest groups have collaborated with department of education personnel, with approval of the state board of education, to reach a consensus on a comprehensive program of assessment, which includes a knowledge test and a one-year supervised internship. The Interim Joint Committee on Education will probably prefile a bill to implement the program.

Computers in Schools

Issue

Should the state equip every public school classroom with a microcomputer?

Background

Nationally, the number of microcomputers available for instructional use in public schools has tripled since 1980. Their major uses have been in providing instruction in basic skills, learning enrichment, computer literacy, computer science and compensatory and remedial work. Although the potential benefits from the new educational technologies appear great, there are problems which must be addressed. Included are initial cost, lack of quality programming and inadequately trained local personnel.

Dealings Between University Affiliated and Non-Affiliated Corporations

Issue

Should all university and affiliated corporation dealings with university non-affiliated corporations be on the basis of contract, specifying services received or rendered and appropriate compensation?

Background

University corporations exist in three forms:

- affiliated corporations, as defined in HB 622;
- organizations with unique relationships to a university but which do not fully meet the definition of affiliated corporation with respect to control by a university; and
- unrelated organizations over which the university exercises no control and with no state revenues involved in their operations.

Some university corporations are substantially assisted in their operations by the university, including, in some cases, provision of office and operating space and staff. Often, university corporations relate to their host university on a quid pro quo basis, without the formality of a contract. Funds flow either by bookkeeping entry or simple gift to the university. This sort of exchange occurs even in cases where the university corporation is not an affiliated corporation with respect to the university. In these cases public resources may be used in the process of operating a private corporation.

The existence of a non-contract relationship makes for an uncertain distinction between the university and the corporation, and could lead to charges that a university is indeed responsible for the actions of a private corporation. If a university is not dealing with an organization it controls, all transactions could be strictly contractual, arms-length dealings, just as the university would deal with any other private entity to which it was providing services or from which it was receiving services.

University Affiliated Corporations and Public Funds

Issue

Should budgeted public funds of university affiliated corporations be reviewed during the budget development process?

Background

HB 622 deals with the financial management of universities and their affiliated corporations. The oversight provisions of this legislation involve a post-review or after-the-fact look at expenditures. This legislation does not address budget review oversight of public funds of a university affiliated corporation, as is required of the university itself.

Nor does it specifically address the capital construction activities of affiliated corporations. An overlap of financial resources does exist between universities and some affiliated corporations. The use of university resources by an affiliated corporation could be delineated in the university's budget.

Elections and Constitutional Amendments

PUBLIC FINANCING OF ELECTION CAMPAIGNS

Prepared by Robert Sherman

Issue

Should qualified candidates for public office directly receive public funds to foster their election campaigns?

Background

Public financing of individual election campaigns at the state level is a statutory scheme by which a state allocates public money to the campaign of a candidate who meets certain statutory qualifications. Allocations of public funds are usually made on a "matching" basis, matching contributions received by the candidate from other sources.

In setting forth statutory qualifications that candidates and their campaigns must meet in order to obtain public financing, states attempt to set policy in the area of money and politics. For example, a public financing scheme might require that a candidate limit his campaign expenditures in return for the receipt of public funds. Or, a state statute might limit public funds to "matching" campaign contributions that are smaller than a given amount, so as to encourage a candidate to concentrate fund raising on smaller contributors. Limits might even be placed on the percentage of a candidate's campaign that could come from interest groups.

Public funding of elections at the state level began in 1973. As of 1981, there were seventeen states with public funding schemes in place. Since that time, two of those states, Oregon and Maryland, have essentially discontinued their programs. These plans vary, including providing funding directly to candidates, to political parties, or to combinations of both.

Kentucky must be counted as one of those states, since it does maintain a funding plan of sorts. KRS 141.071-.073 allows each taxpayer to "checkoff" from his tax liability one dollar, which will be remitted to the political party of his choice. This "checkoff" amount will increase to two dollars per taxpayer for the tax year 1984. Fifty cents of that amount will be reserved for local county party organizations. KRS 141.072 provides that the commissioner of revenue shall certify by December 1 of each year the amounts from the checkoff that shall be paid by the state treasurer to the political parties. Funds raised are approximately $250,000 per tax year. The democratic party receives more than two-thirds of this amount.

KRS 121.230 designates the purposes for which the political parties may use checkoff funds, which are, of course, monies diverted from the general fund.

> No state or local governing authority of a political party to which funds are remitted...shall use such funds other than in support of the party's candidates in a general election and for the administrative costs of maintaining a political party headquarters.

It is assumed that the majority of funds received are utilized by the parties for administrative costs. Kentucky's limited public financing scheme, therefore, does not directly allocate funds to individual campaigns and does not attempt to set election finance policy, beyond encouraging political party strength.

During the Regular Session of the 1980 General Assembly, a bill was considered that would have directly funded certain candidates upon certain conditions. SB 171 proposed to publicly match, dollar for dollar, contributions received by gubernatorial candidates in the primary and regular elections. As a condition for participation, however, the candidate would have had to agree to expend less than a total of $750,000 in a campaign. In an earlier form, SB 171 would have allowed matching payments for contributions under $100. The bill envisioned that this scheme would be at least partially funded by a two dollar income tax checkoff, discontinuing the present funding of political parties. SB 171 did not gain legislative approval, however, but died in Senate committee.

Discussion

A statutory plan of direct payment of public funds to the campaign organizations of qualified candidates would most likely focus on prescribing policy regarding money in politics. It should be remembered that this is a complex area, often involving competing and equally positive interests. Decision makers may have to balance traditional interests of freedom of speech and freedom of association against an objective of fairness of opportunity to participate in the democratic process, both as candidate and financial supporter. Because of the complexities involved, public opinion may not be of help in determining the best course of action.

One of the most frequently cited reasons for the direct public funding of campaigns is the opportunity that arises thereby to limit total campaign expenditures of the campaign receiving public monies. It has been clearly held by the United States Supreme Court that it is unconstitutional to simply statutorily prohibit candidates from spending more than a fixed sum of money during their campaigns. Buckley v. Valeo, 96 S. Ct. 612 (1976). It is constitutionally permissible, however, to require a candidate to voluntarily limit his expenditures in return for the receipt of public funding. Seven states include limitations on campaign expenditures as part of their public funding schemes: Hawaii, Michigan, Minnesota, New Jersey, North Carolina, Utah, and Wisconsin.

Arguments in favor of campaign expenditure limitations would include the idea that such a limitation would open the door for persons other than the very wealthy and those with access to the very wealthy to become political candidates. Expenditure limitations would encourage more person-to-person campaigning and "grass roots" organization by candidates, since less money would be available for media advertising. A diminishing of preelection media blitz might also reduce the voter apathy and "burnout" caused by that barrage.

Opponents of expenditure limitations, even voluntary limitations, would argue that the right to spend money expressing ideas is analogous to freedom of speech and as such should never be tampered with. It could be argued that today's voter, living in a complex society, needs as much information as possible presented to him through candidate-financed position statements.

Finally, it could be argued that American elections are relatively inexpensive. It has been noted that Americans spend more yearly on deodorant than on the cost of campaigning for and conducting elections.

A second policy that might be written into a public funding statute concerns limiting the influence that large contributors and interest groups or political action committees have on campaigns. One method would be through limited matching of funds. Since most public funding plans allocate funds matched in some way to private contributions received, the idea here is to match only contributions of less than one or two hundred dollars. Or, the statute might directly require that candidates receive no more than a certain percentage of their funding from interest group contributions (although this approach could cause interest groups to promote their views and candidates independently of candidate organizations, causing more confusion than benefit).

Proponents of legislation which would limit influence by wealthy contributors and interest groups assert that such a limitation would force a candidate to concentrate fund raising efforts on ordinary citizens or smaller contributors. Any shift in financial dependency on a relatively few wealthy contributors and political action committees to a broader base of the citizenry might begin to reverse the recent political trend in this country toward one-issue politics.

Opponents of contribution incentives or controls might point to the fact that candidates already are forced to spend too much of their time in the pursuit of contributions instead of formulating and presenting issues. Requiring or encouraging increased fund raising from the small contributor could take more of that time. Further, it must be admitted that in many instances, interest groups are in a unique position to educate candidates on a variety of often complex issues. Their participation in the political process should not be discouraged.

At least one other method for limiting interest group influence should be mentioned here. It concerns constructing and maintaining a "counterpoint" to interest groups that serves as a buffer between a candidate and the interest group or political action committee. A most effective counterpoint is the political party. A candidate would probably prefer receiving funds or other support from his party rather than an interest group, since fewer conditions would be attached. Therefore, a public funding plan that strengthens political parties, as Kentucky's present system attempts to do, can indirectly stem the influence of interest groups.

Finally, the question of cost comes into any discussion of public funding of election campaigns. The cost factor affects the structure of any proposed public financing statute. Do you fund many elective races, a few, or just one? In Michigan, for example, only the gubernatorial race is funded. Do you fund only the general election, or the primary election as well? What is your matching ratio to be: one public dollar to one private contribution dollar? one-to-two? It has been shown that if the financial rewards are not great enough, candidates will simply opt out of public financing plans, thereby rendering inoperative any policy considerations contained therein. (On the other hand, plans that are too financially attractive can encourage persons to become candidates who might not be serious participants, causing the unexpected result of actually increasing, rather than decreasing, the total amount actually expended during a campaign.)

In this state, it is likely that the enactment of any public funding plan which would directly fund individual candidates would require an appropriation commitment over and above revenue which might be derived from the income tax checkoff. The question then becomes whether Kentucky, with its present depressed financial condition, considers the policy benefits offered by a modified and strengthened public financing statute to warrant labeling this issue a priority item.

NUMBER OF ELECTED CONSTITUTIONAL COUNTY OFFICERS

Prepared by Linda Wood

Issue

Should the number of elected constitutional county officers be decreased either by combining functions or making some offices appointive?

Background

Kentucky has had four constitutions in its history, including the present one, which was adopted in 1891. The Constitution of 1792 provided for three county officers, one of whom was to be appointed. The 1799 Constitution provided for the same three county officers, plus a surveyor, as needed, all to be appointive positions. The 1850 Constitution increased the county officers to ten, all but one of whom were to be elected. Section 99 of the present Constitution provides for the same ten officers, all of whom are to be elected.

Three to eight justices and constables are required to be elected in each county. In 104 counties the justices serve, along with the county judge/executive, as members of fiscal court, the county legislative body.

Fifteen counties have elected to adopt the commissioner form of government, and thus have a fiscal court composed of three commissioners and the county judge/executive. Fayette County, which now operates under a unique statutory form of county government, also elects commissioners. Counties electing a commissioner form of government must continue to elect justices, although the justices have few remaining duties.

The Judicial Article, a constitutional amendment which was approved by the voters in 1975 and which became effective January 1, 1976, abolished many existing courts and established a new judicial structure for the Commonwealth. The abolition of the juvenile, county, quarterly and magisterial courts and courts of claim affected the duties of some elected county officers.

Fayette County government structure is unique, in that the city and county governments have merged under statutory authority to form an urban-county government. This structure presents special problems concerning some of the elected county offices. Both justices and commissioners are elected, even though the Urban-County Council has assumed most of the powers of fiscal court, which were legislative. Further, since the chief executive of Fayette County is a mayor, the county judge/executive has few remaining duties.

Discussion

The principal issues concerning the constitutionally mandated elected county officers relate to the large number of these officers, the fact that all these constitutional officers are elected, and the fact that there has been a significant decrease in the duties of some of the officers.

By comparison with other states, Kentucky elects a large number of county officers. Many other states have either combined duties, so that there are fewer positions, or have made many of the positions appointive.

Beginning with its third Constitution (1850), Kentucky required the election of a large number of county officials. Implementation of the Judicial Article seven years ago restructured many county offices and stripped them of their primary duties. Need for the services of one office has so diminished that the office has become outmoded. Adoption in Fayette County of the urban-county form of government has further eroded the duties of at least one constitutionally mandated office in that county.

County Judge/Executive

The Judicial Article, by abolishing certain courts, stripped the county judge/executive of his judicial duties. Also, during the 1976 Extraordinary Session, the General Assembly enacted legislation to strengthen and clarify the administrative and executive powers of the position.

In every county except Fayette County, the county judge/executive now serves as the chief executive officer of the county and as a member of fiscal court, the legislative body of the county. The only general issue which has been raised with respect to this office is the lack of separation of executive and legislative functions of the office.

The unique structure of urban-county government strips the Fayette county judge/executive of virtually all duties. The charter designates the mayor as chief executive of the county and the Urban-County Council as its primary legislative body. Thus, the only remaining duties of this county judge/executive are to make appointments to fill certain vacancies, sign orders and administer oaths to new county officers and to preside over the annual meeting of fiscal court. He may also perform marriages.

County Commissioners

County commissioners are elected in those sixteen counties, including Fayette County, which have chosen a county commissioner, as opposed to a magisterial, form of county government. The commissioners serve as members of fiscal court, the county legislative body.

The situation in Fayette County is, again, unique. The county opted for the commissioner form of government and later implemented an urban-county form of county government, with the Urban-County Council as its legislative body. This change left meeting once or twice a year to approve central funds and taxes as the only duty of the commissioners.

Justices of the Peace

The Judicial Article eliminated the magisterial courts, thus stripping justices of the peace (or magistrates) of all judicial duties. In those sixteen counties, including Fayette, which have chosen a commissioner form of government, the only remaining duties of this position are to perform marriages and to accept applications for notaries public.

County Clerk

The Judicial Article eliminated the juvenile, county and quarterly courts, all of which were served by the county court clerk. Despite this change, the office still has substantial duties. The constitutional title of county court clerk became obsolete with the elimination of the county court. Thus, the position is now statutorily referred to as "county clerk."

County Attorney

The nature of this office was changed upon implementation of the Judicial Article. However, the duties remain essentially the same.

Coroner

The duties of the coroner include determination, in specified cases, of the cause of death, ordering autopsies in certain circumstances, and ordering inquests. He is also a peace officer and thus has the power of arrest, the right to bear arms and to administer oaths.

Sheriff

The primary change in the position of sheriff since adoption of the current Constitution is that there is less emphasis on law enforcement duties in some counties, especially those having large population centers and a county police department.

Sheriffs are prohibited from serving two successive terms. The constitutionally mandated fee system has resulted in many sheriffs having inadequate salaries and operating funds.

Jailer

The position of jailer is unique to Kentucky. The position is not mentioned in the constitution of any other state and exists in only a few counties of one other state. In most states the sheriff or a deputy performs the duties that in Kentucky are assigned to the jailer.

Constables

Constables formerly served the magisterial courts. The duties of the office have decreased subsequent to the elimination of magisterial courts by the Judicial Article.

The remaining duties of the office are to serve those court papers not served by the sheriff or his deputies and to serve as a peace officer. The role of the constable as peace officer is severely limited by 1970 legislation which has been interpreted by the attorney general to exclude constables from using blue lights in their vehicles.

In the 1981 elections, constables were not elected in 138 of the state's 607 magisterial districts. Six counties currently have no constables; only seventy-two counties have a constable elected from each district. Eighteen of the constables elected in 1981 were elected with fewer than twenty-five write-in votes; five of them were elected with only one vote. Some candidates who are elected never serve.

Surveyor

Property boundaries have stablized and there is little need for the services which are the responsibility of this office. In most counties no one runs for this office and it is not filled.

Alternatives

Some of these offices might appropriately be eliminated and their functions combined with those of remaining offices. If it is preferable to leave some of these offices intact for historical sentiment, an alternative might be to statutorily assign additional duties to the offices. It may be desirable to make some of those offices with more substantial duties into appointive positions, thus simplifying some elections by shortening the ballot.

DECREASE IN NUMBER OF ELECTIONS

Prepared by Linda Wood

Issue

Should the Constitution of Kentucky be amended to permit the elimination of elections every second or fourth year?

Background

The Constitution provides in Section 148 that only one election a year is to be held except as otherwise provided in the Constitution. Currently an election is held every year, resulting in enormous costs to both the state and the counties.

When the Constitution was being drafted in 1890-1891, federal legislation was pending to give the federal government supervision over elections at which a federal officer was being elected, which was every even-numbered year. The delegates inserted Sections 148 and 167 into the Constitution to prohibit the election of certain local officials in even-numbered years, thus avoiding federal oversight. The delegates then separated elections for state and local officers to alternating odd-numbered years, finally resulting in annual elections.

Recent election data from the State Board of Elections indicates that the combined cost of a primary and a general election in the state costs the state and counties in excess of $3,650,000. The cost to the counties is approximately $3,100,000, and state costs are in excess of $550,000.

Discussion

The state Constitution could be amended to change one or more sets of odd-year elections to even-numbered years by a one-time extension of terms of one year, thus eliminating either one-fourth or one-half of the present number of elections. Officials are elected in Kentucky in the following years:

Table

	1983	1985	1987	1989	1991	1993	1995	1997	1999
State Officers	X		X		X		X		X
Railroad Commissioners	X		X		X		X		X
Court of Appeals Judges	X				X				X
Circuit Court Judges	X				X				X
Commonwealth Attorneys			X			X			X
Circuit Clerks			X			X			X
County Officers		X		X		X		X	
City Officers		X		X		X		X	
District Judges		X		X		X		X	

The changing of all these odd-year elections to even-numbered years would eliminate half the elections. This change could result in enormous savings. However, it could also result in a ballot which would be so crowded that voters might be unable to devote adequate attention to individual races.

In the alternative, one election in four could be eliminated by making either of two modifications that would free every other odd-numbered year of elections. The middle group of officers in the above table could be elected in even-numbered years, along with either the first or the third group of officers.

A change could not be affected for several years. An amendment could be placed on the ballot in November of 1984, which would then make the one-time term extension begin with the officers elected in either 1985 or 1987, depending upon which elections were being changed. Therefore, the first year which could be cleared of elections would be either 1989 or 1991.

OTHER ELECTIONS AND CONSTITUTIONAL AMENDMENTS ISSUES

State Lottery

Issue

Should the Constitution of Kentucky be amended to permit the operation of a state lottery?

Background

As of 1981, fourteen states had authorized and were operating state lotteries. First year sales of lottery tickets in some of these states were impressive. Michigan, for example, reported first year sales of $137 million, Pennsylvania sold $104 million worth of tickets, and New Jersey grossed approximately $73 million in sales. Proponents of state lotteries assert that these devices are at least a partial solution to the fiscal difficulties felt by many state governments, including Kentucky's. Those in opposition, however, often object to the authorization of a state lottery on moral grounds, decrying the financing of governmental functions through gambling activity. There are even some doubts as to the long-term financial gains that can be derived from some types of lotteries.

Section 226 of the Kentucky Constitution presently forbids all lotteries and "gift enterprises." It would therefore be necessary for the General Assembly to propose a constitutional amendment, with subsequent ratification by the electorate, before a lottery could begin operation. Bills were introduced both during the 1980 (SB 125) and 1982 Regular Session (SB 110) that would have proposed to amend the constitution to specifically allow an annual state lottery based on the Kentucky Derby. Those bills even went so far as to constitutionally allocate the lottery proceeds. Some would argue, however, that the most appropriate way to begin consideration of the state lottery issue would be to propose to simply repeal the prohibitions that are within Section 226. The lottery issue would then be under the complete discretion of the General Assembly, just as other forms of gambling are regulated by the legislature as reflected in KRS Chapter 528. The absence of constitutional lottery prohibition, or even definition, might give the General Assembly the flexibility needed to construct a lottery policy and operation most conducive to the needs of Kentucky.

Election Contest Reform

Issue

Should the statutory procedure for contest of election of governor, lieutenant governor, and General Assembly members be more clearly delineated?

Background

Section 90 of the Kentucky Constitution requires that contested elections for governor and lieutenant governor be determined by both houses of the General Assembly. Section 38 of the Constitution states that each house of the General Assembly shall be the judge of qualifications and elections of its members but that a contested election "shall be determined in such manner as shall be directed by law."

Except for these instances of constitutional mandate, election contest proceedings are described strictly by general law. It can be seen from a quick glance at the statutes contained in KRS Chapter 120, that lawmakers have determined that, absent a constitutional provision to the contrary, the courts are the proper forum for election contests. All primary election contests and all general election contests, other than for the general election of governor, lieutenant governor, or General Assembly member, shall be filed with the circuit courts.

KRS 120.195, 120.205, and 120.215 are the statutes which set out election contest proceedings to be tried by boards within the General Assembly for the offices mentioned above in accordance with the constitution. The problem with these statutes is that they may lack specificity. It must be remembered that the General Assembly is not normally concerned with trying what is, in fact, a lawsuit and has no body of applicable procedural rules to fall back upon when statutory law is vague. During the recent 1982 Regular Session contest proceeding involving a house seat, for example, it was apparent that the attorneys of record were confused about where to give notice of the action. Attorneys and the house board of determination were even unsure whether to employ civil or criminal rules of procedure. These types of problems could be corrected upon enactment of clear statutory descriptions of process. Or, a more drastic solution to this problem would be a proposed constitutional amendment allowing all election contest determinations to be within the purview of the courts.

Energy

THE PRICE OF NATURAL GAS

Prepared by Linda Kubala

Issue

Can the General Assembly do anything to keep down natural gas prices?

Background

For years natural gas was an inexpensive source of energy in Kentucky, both for home heating and for industrial use. Shortages which developed during the 1970's limited the use of natural gas in new homes, but regulated gas prices remained far below those of electricity, fuel oil, or propane. This situation changed drastically after the passage by Congress of the Natural Gas Policy Act of 1978. Prices soared, more than doubling in most parts of the state between 1979 and 1982, and they continue to rise. Gas supply has increased, but conservation by homeowners, a recession, and fuel-switching by some industrial customers has lowered demand. Major pipelines now have contracted to buy more gas than they can sell. Despite indications that prices have reached a level where alternate fuels are competitive, wellhead and wholesale prices keep going up, and gas utilities continue to pass these increases on to customers.

Kentucky also is a gas-producing state, and supply and pricing problems also affect producers. Many of the Kentucky wells which sold gas to interstate pipelines have been shut in, even though this gas generally commands lower than average prices. While some producers are shut out of the market altogether, others with assured buyers have been able to reclassify old producing wells under the Natural Gas Policy Act to obtain prices of $3.50 or more per mcf (1,000 cubic feet). Still other producers continue to sell gas, but are bound by long-term contracts to prices as low as 40¢ per mcf. In the present confused Kentucky gas market, neither the cost of producing gas, nor the ability to sell the gas produced, appear much related to the selling price.

The disparities between demand and price are most obvious in Kentucky's gas fields. In Pike and Floyd counties, for instance, which have produced gas for fifty years, many producing wells have been shut in, due to lack of demand. Yet retail customers pay market prices for gas. Many customers served directly from gathering lines know that the wells which supply them have been producing for decades, and can see no increase in production costs. Yet their bills often have quadrupled, in some cases have increased as much as ten-fold, in a few years. The result is outrage and a demand for change.

Discussion

Natural gas pricing and production problems are particularly frustrating because most of the obvious or sweeping solutions lie outside of the state's jurisdiction. Neither the General Assembly nor the state Public Service Commission has any authority over the wellhead price of most gas consumed in Kentucky. Section 602 of the Natural Gas Policy Act does allow states to set lower ceiling prices for intra-state gas production, and the Public Service Commission is looking at possible applications of this section. However, while Kentucky produces about 25% as much gas as it consumes, very little of Kentucky's gas production is classed as intra-state. Any Kentucky gas sold to or produced by a pipeline company which crosses a state line becomes interstate gas, under federal jurisdiction. This is true even if that particular gas in fact serves farmers down the road or serves the nearest town.

Kentucky also has no jurisdiction over the wholesale prices charged by interstate pipelines to gas distribution companies. Very little can be done to contain retail rates if wholesale rates are beyond control. Finally, with many of the immediate problems linked to the inflexible, long-term contractual arrangements prevalent in the gas industry, the General Assembly is constrained by the Kentucky Constitution. Section 19, which prohibits enactment of any law impairing the obligation of contracts.

Despite these limitations, several alternatives are available to the General Assembly.

(1) Petition and admonish Congress to act on the issues.

Dozens of bills to amend the Natural Gas Policy Act have been introduced in Congress since January. Committees in both the House and the Senate are actively debating proposed changes, yet it is quite possible that no action will be taken this year. At this stage states and state legislatures can have an impact on the solutions which are adopted.

(2) Encourage Kentucky natural gas distributors, the retail gas companies, to procure alternate, cheaper gas supplies.

The state retains the right to regulate the prices charged by gas companies to customers. Gas companies not owned by cities are regulated by the Public Service Commission. While the Commission cannot force these companies to sell gas for less than they have to pay to buy it, they can expect these companies to demonstrate that they are buying gas at the cheapest possible prices, and are not merely paying whatever price their primary supplier demands. In Ohio, a bill currently is being considered which would establish incentives to reward companies who, through their procurement efforts, are able to lower their gas supply costs. Alternatively, the General Assembly could direct the Public Service Commission to deny gas price increases if the company failed to utilize cheaper alternatives.

(3) Encourage greater use of Kentucky gas on a "self-help basis."

Self-help gas refers to gas purchased, usually by a large industrial user or retail gas company, directly from a producer rather than from the pipeline. Since Kentucky producers have surplus gas to sell, at prices lower than those charged by the major pipelines, it would seem that both Kentucky producers and Kentucky users could benefit from greater use of direct, "self-help" purchases. Some of Kentucky's neighboring states move considerable quantities of self-help gas; in Kentucky, efforts often have failed because companies are unwilling to transport gas for others, and because of the complexity of necessary negotiations. The General Assembly could encourage self-help purchases by offering coordination and technical assistance to involved parties, either through the Public Service Commission or another state office.

DEVELOPING RENEWABLE ENERGY

Prepared by Mary Lynn Collins

Issue

Should the state provide additional incentives to develop renewable energy?

Background

As a result of the energy shortages of the seventies and the rapidly increasing costs of energy today, most states have provided incentives to developers of renewable energy. Part of the appeal of utilizing more renewable energy resources, such as solar, hydropower, wind and biomass, is that these energy resources are considered safe, clean, and abundant and are proving in many cases to be cost effective. States have taken varied approaches to encouraging renewable energy, offering both tax and non-tax incentives.

In addition to passing SB 18, which recognized the right of a property owner to negotiate with neighboring landowners in order to obtain a solar easement, the 1982 Kentucky General Assembly passed three pieces of legislation containing non-tax incentives for renewable energy development. HJR 3 created an Alternate Energy Development Fund to provide grants and loans up to $40,000 for solar and other alternate energy projects. In addition, HJR 3 directed that the Interim Joint Committee on Energy form a Subcommittee on Alternate Energy to oversee alternate energy developments during the interim. HJR 4 directed that the Department of Finance amend Regulation 8 so as to require life cycle costing calculations in the energy systems designs of all state facilities and SJR 1 directed that the Public Service Commission study ways to assure that utility rates do not discriminate against renewable energy users.

An income tax credit proposed for investments in solar, wind, and hydro-thermal energy failed in the 1982 General Assembly. Currently, Kentucky's only tax incentives for renewable energy are for gasohol production (HB 838, 1980, and HB 594, 1982). However, Kentuckians do have a federal tax credit available to them for installing a renewable energy system in their home. The federal credit is equal to forty percent of the first $10,000 expended, for a maximum credit of $4,000 for a qualifying residence.

Discussion

Almost any incentive that the General Assembly is likely to consider will involve an appropriation or - in the case of tax measures - a loss of revenue. At the same time, the nature of the renewable energy industry can prove to be beneficial to the local economy. For example, the solar industry is very labor intensive and has attracted small business investments. The General Assembly, in 1984, will have to decide, first, if there is a need for additional incentives to develop renewable energy, and then weigh the benefits against the cost of furthering that development.

Activity in the field of renewable energy has increased significantly in Kentucky. According to the Kentucky Energy Cabinet, the number of renewable energy projects in the state has nearly doubled in the last two years. There are estimated to be over two thousand renewable energy projects in Kentucky, ninety percent of which are active and passive solar installations. With this expansion, the General Assembly may conclude that no further incentives are needed to encourage the utilization of renewable energy resources.

However, the federal tax credit for solar and other renewables is due to expire at the end of 1985. Assuming that the federal tax credits have stimulated renewable energy development in Kentucky, there could be a decline in that development with the termination of the federal tax credit.

A discussion of three incentives that the General Assembly may consider in 1984 follows:

(1) Provide an income tax credit for investments in renewable energy.

Tax incentive legislation has been introduced the last four sessions and failed. Kentucky is one of only four states that has not legislated any tax incentives for renewable energy development, other than for gasohol production. Among the renewable energy advocacy groups, there seems to be strong support for a tax credit similar to the federal tax credit. A tax credit is substracted directly from the amount of income tax owed. Such an incentive, depending on the size of the credit, can significantly reduce the high initial cost of a renewable energy system. The revenue loss created by a tax credit depends on the size of the tax credit, the participation rate, and the duration of the credit. Tax credits have proved popular as a tax incentive. Twenty-six states now offer some form of a tax credit. Other tax incentives that could be considered are sales and property tax exemptions and income tax deductions for investments in renewable energy.

(2) Extend the Alternate Energy Development Fund.

Legislation and funding are needed if the Alternate Energy Development Fund is continued. The fund was created by joint resolution rather than by statute, and given $179,000 for the biennium. Private businesses, state agencies, and local government units are eligible to apply for the grants and loans, as are individuals. Response to the fund has not been as strong as had been anticipated and the General Assembly may want to change the structure of the fund to make it more attractive to prospective applicants.

(3) Appropriate funds for life-cycle costing analysis of energy systems in state facilities.

Renewable energy systems and equipment usually cost more to purchase than conventional items, but in the long run often are cheaper alternatives because they are less expensive to run and frequently last longer. Life-cycle costing of state energy systems would take all of these factors into account and thus could encourage more use of renewable energy resouces. The Finance and Administration Cabinet has indicated that they are addressing the directive in HJR 4 internally whenever possible, but that they are limited in implementing the 1982 legislation that requires the use of life-cycle costing in the energy systems of state facilities, since no money was budgeted to do so. The 1984 General Assembly may want to appropriate sufficient funds to insure that the life-cycle costs of energy systems in state-owned facilities are considered in the future. This incentive, unlike the other two discussed, could actually save the state money, since energy costs now represent over one-third of the state's budget for maintaining its facilities.

Health and Welfare

DECRIMINALIZATION OF PUBLIC INTOXICATION

Prepared by Robert Gray

Issue

Should funds be appropriated for the implementation of HB 370, which decriminalizes the offense of public intoxication effective July 1, 1984, or should a less costly alternative to total decriminalization be proposed?

Background

The 1980 General Assembly enacted Senate Bill 214, which decriminalized the offense of public intoxication effective July 1, 1982, but appropriated no funds for its implementation. The law provided that a person intoxicated in a public place be taken home, to a treatment program, or if no treatment is available, to a place of detention. Decriminalization did not apply to the offense of driving under the influence. In 1981, a Cabinet for Human Resources Task Force examining decriminalization estimated the cost of implementation - to establish additional treatment facilities, train officers, and provide transportation of the publicly intoxicated to appropriate locations - at $3.3 million. In order to generate the necessary funding, the task force recommended that (1) a "dedicated alcohol premium" be levied on all alcoholic beverages to fund treatment programs and (2) implementation of SB 214 be delayed until July 1, 1983, to allow time for the necessary treatment programs to be developed.

In response to these recommendations, the 1982 General Assembly enacted HB 370, which delayed the effective date of decriminalization of public intoxication until July 1, 1984. Legislation to impose a dedicated alcohol premium on alcoholic beverages was considered by the 1982 General Assembly but not passed. The status of decriminalization is much as it was prior to the 1982 session, except that the current cost of implementation is estimated at $4 to $4.5 million. Unless new sources of revenue are developed, the law's effective date will have to be delayed further or the provisions of decriminalization will have to be modified to allow implementation at a reduced cost.

Discussion

Several of the more promising sources of revenue for decriminalization appear to have a reasonable relationship to the use and abuse of alcohol. These sources are the dedicated alcohol premium, fines assessed for the offense of public intoxication, and the forfeiture of the assets and profits of illegal drug activity. The dedicated alcohol premium is essentially a tax levied at the wholesale level on all alcoholic beverages sold in Kentucky. The premium would average one cent per drink (of wine, beer or distilled spirits) and would generate estimated annual revenues of $14 million. All receipts would be placed in a special fund and used solely for alcohol and drug abuse programs. Proponents of the premium argue that the burden of providing funding for treatment programs would be shifted from the general public to those people who consume alcoholic beverages. Opponents see the premium as an additional tax on a product that is now sufficiently taxed.

Another funding source is the fines paid by the publicly intoxicated. This method would involve diverting such fines from the court system into a special fund for treatment. However, the use of fines would generate a limited amount of revenue, because many persons arrested for PI cannot pay the fine. Based on the amount in fines now paid for public intoxication, this proposal could generate annually approximately $500,000. The total could be increased by adjusting the $250 fine for public intoxication accordingly.

The third measure, forfeited assets of illegal drug dealers, has been suggested in the form of a model law by the Federal Drug Enforcement Administration. Under the model law, all assets and profits involved in illegal drug transactions (including the drugs, cars, money, houses, boats, bank accounts and similar property) would be seized and forfeited to the state to be used for treatment and law enforcement activity. Kentucky law does provide for the forfeiture of property (such as cars, aircraft and money on hand) used in drug transactions, but all forfeited monies go to the general fund. The model law extends the items subject to forfeiture. The total amount of revenue generated would depend on the nature of property forfeited, but estimates range from $500,000 to $1 million annually.

As an alternative to the measures identified, if the $4 to $4.5 million needed to implement decriminalization cannot be generated, the law could be amended to reduce the implementation cost. Such amendments could include:

(1) Making the offense of public intoxication a violation ($100 fine) instead of a Class B misdemeanor ($250 fine or 90 days in jail, or both);

(2) Providing for court ordered treatment or a jail term if an offender refused to pay a fine or had a specified number of violations in a given period (such as 3 violations in 12 months).

These amendments would permit the courts to retain control over those intoxicated in public yet remove them from jails, where their maintenance is a great expense. A jail sentence could still be used as a last resort or as leverage for persons who might not voluntarily seek treatment. The need for additional treatment facilities would be reduced by referring only repeat offenders to treatment programs, rather than all persons who are intoxicated in public.

Assuming the 1984 General Assembly affirms the support it has given the concept of decriminalization in 1980 and 1982, the question will be whether new sources of revenue should be developed or whether existing funds should be diverted from the criminal justice system to fund a modified form of decriminalization of public intoxication.

COMPOSITION OF THE CERTIFICATE OF NEED BOARD

Prepared by Carol Whitty

Issue

Should the composition of the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board be expanded to include a broader range of provider and consumer groups, or limited to a small group of full-time professional board members?

Background

The Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board (CON Board) was created by the Kentucky General Assembly in 1972. The Kentucky certificate of need program was part of the federal health planning initiative to regulate health facilities and services, first enacted in the Partnership for Health Act of 1966. The broad purposes of both the state and federal programs were to provide for the orderly development of health facilities and services, and to insure the availability and equal access of quality health services to all citizens at a reasonable cost. The Kentucky Act authorized the CON Board to issue certificates of need and licenses, to promulgate administrative regulations establishing standards for health facilities and services, and to enforce its own actions. The facilities and services most affected by the 1972 Act included hospitals, nursing homes, emergency care services and mental health services. Private physician's offices were specifically exempt from the requirements of the certificate of need program.

The initial composition of the CON Board included fifteen members appointed by the Governor, representing the following groups:

- 2 members--Kentucky Hospital Association
- 2 members--Kentucky Nursing Home Association
- 2 members--Kentucky Medical Association
- 1 member--Kentucky Nurses Association
- 1 member--Kentucky Dental Association
- 4 members--Consumer with an interest in education, rehabilitation, mental health, home care, or ambulatory care
- 3 members--Consumers-at-large

In 1974 the Act was amended to add one member to the CON Board representing the Kentucky Pharmacists Association. In 1980, the Act was re-enacted as KRS 216B. The term "Kentucky Nursing Home Association" was changed to the "Kentucky Association of Health Care Facilities," which continued to have two members on the Board.

KRS Chapter 216B requires health service providers to obtain a certificate of need if they wish to: (1) establish a new health facility; (2) obligate capital expenditures above a certain minimum amount; (3) make a substantial change in bed capacity or services; (4) acquire major medical equipment; (5) change location; or (6) transfer a previously approved certificate. In determining whether a given proposal is needed, the CON Board uses a series of statutory criteria relating to whether the particular proposal is consistent with the State Health Plan, whether the facility or service meets an identified need and is geographically accessible, whether there are the necessary inter-relationships and linkages with other services and facilities, whether the proposal is excessively costly or economically feasible, and whether the proposal will result in high-quality services. Special needs of health maintenance organizations are given consideration. The State Health Plan is a document developed by the State Health Planning Council which describes the health and mental health needs of the population.

The facilities and services most affected by the Act have greatly expanded, due to technological innovations in health services, federal funding and reimbursement for primary care, renal dialysis and alternatives to institutional care, such as home health, and the diversification of the health industry during this period. By 1982 the CON Board was setting standards for and regulating such diverse facilities and services as primary care centers, ambulatory surgical centers, hospices, renal dialysis facilities, health maintenance organizations, rural health clinics and home health services. This change in focus might have resulted in over-representation of some services and facilities on the CON Board and under-representation of others. Thus, the evolution of the health care delivery system was not necessarily reflected in the CON Board composition.

The CON Board is staffed by the State Health Planning Agency out of the Cabinet for Human Resources. The national health planning legislation has been revised by Public Law 93-641, the National Health Planning and Resources Development Act of 1974 (later amended in Public Law 96-79), which created a network of state, regional and local agencies with greatly expanded authority over health facilities and services. The new federal legislation required the state CON Board to conform to a number of federal requirements regarding the types of review proposals to be covered by the state law, review procedures and criteria and required definitions. There are no specific requirements regarding CON Board composition. The penalty for non-conformance with federal requirements is a substantial loss of federal health funds.

Although forty-nine states have adopted a certificate of need statute for reviewing capital costs, the location of the decision-making authority varies from state to state. In approximately one-third of the states, the decision of whether to approve or deny a certificate of need is made by a state government official or agency, similar to Kentucky's State Health Planning Agency. Most of the remaining states have CON Boards appointed by the governor with nominations by local planning agencies and professional associations. Five states have full-time professional health facilities commissions of three to six members who may act as either the only administrative decision-making authority or as an appeals body from the decision of a state official or agency.

State statutes establishing health facilities commissions generally include provisions regarding the composition of the commission, qualifications of commissioners, duties, renumeration, and conflict of interest. For example, the Oklahoma Health Planning Commission consists of the State Commissioner of Health, Director of Health, the Director of the Department of Human Services and two members appointed by the Governor. The two lay members must be individuals who have not been members of a health care profession, and have not had a material financial interest in health care. The Commission has authority over all health planning activities, including the certificate of need program. The Texas Health Facilities Commission is under the direction of three commissioners appointed by the Governor, with the advice and consent of the Senate. The Governor may not appoint to the Commission any person who is actively engaged as a health provider or who has any substantial pecuniary interest in a facility. The Commissioners are entitled to a salary and travel expenses within the limits of legislative appropriations. The Commission makes all decisions related to the Texas certificate of need program. The Mississippi Health Care Commission has six members, appointed by various elected state officials. The Commission has four consumers and two providers. A commissioner may not participate in certificate of need decisions if he has any fiduciary interest in the proposal. The Commission is responsible for all health planning determinations.

Studies of the effectiveness of certificate of need programs nationwide in meeting their varied objectives have had mixed results. Most studies have utilized pre-1976 data, before most programs became fully operational. Most commentators agree, however, that certificate of need alone can accomplish only a small fraction of cost containment goals. The major deficiency identified in the certificate of need program is its inability to change the quantity and intensity of services provided; or to affect the total amount of capital investment in the health care industry, since many capital costs are not covered under the CON expenditure limitations.

There is considerable controversy regarding the Kentucky CON Board and its performance in reducing or containing the substantial increase in health care costs. Data compiled by the State Health Planning Agency indicates that in 1982 less than 8% of all proposals were denied by the CON Board. In 1982, $385 million in capital expenditures were approved; only $2.5 million were denied - less than 1%. Nationwide, an average of 15% of capital expenditure costs are denied. The total amount of capital expenditures approved in Kentucky has increased dramatically since 1979, from $98 million in 1979 to $385 million in 1982.

There is evidence that the certificate of need program has been generally unsuccessful in complying with the General Assembly's mandate as outlined in KRS Chapter 216B. The high approval rates, the belief that orderly development of health services has not been achieved and that geographic imbalances have not been corrected, the lack of development of less cost-provocative and preventive services, such as primary care and home health services, and the proliferation of duplicative high technology services are reasons cited for the dissatisfaction with the CON program. Defenders of the program have described the improved community input and public accountability, the development of a more complete and accurate data base on health facilities and services, and a broader planning outlook by providers as program strengths. Both its defenders and detractors agree that there is some confusion in the goals and philosophical underpinnings of the program, and difficulty in reconciling the twin objectives of increasing availability and quality of services while at the same time containing health care costs.

Discussion

The composition of the CON Board, with its majority of health care providers and dual representation of provider organizations, has been cited as one of the major reasons for the high approval rate of certificate of need proposals. A number of health care provider organizations, representing primary care services, home health services, health maintenance organizations, mental health centers and hospices are not members of the CON Board, even though their members are greatly affected by its proceedings. Consumer advocacy groups for older persons, children, women and low-income persons, who are often disproportionately affected by Board decisions, are not represented. The Board membership also includes some professional organizations which are not directly affected by the operation of the certificate of need statute, such as dentists and pharmacists. Similarly, major payors of health services, such as those employers comprising the Governor's Coalition of Payors to Address Health Care Costs, are not members of the CON Board.

Thus, proposals for changing the composition of the CON Board are to broaden the number of provider groups with Board membership, to eliminate dual representation of some provider groups, to provide for a majority of consumers, to add payors, and to specifically enumerate certain categories of consumers to be represented on the Board.

Another proposal is to reconstitute the CON Board into a small Health Facilities Commission of three to six full-time professional board members. As described earlier, Oklahoma, Texas and Mississippi have formed health facilities commissions. The Commission would perform duties similar to those of the existing CON Board. In Kentucky, the operation of such a Commission might resemble the Public Service Commission, which has three full-time commissioners appointed by the Governor.

The advantages of the commission model are that the commissioners, who are working in a full-time professional capacity, would have sufficient time to develop the needed expertise to comprehend the complex proposals submitted by health care facilities through the certificate of need process. Presumably commissioners would be less subject to the pressures inherent in a community-based planning process. Consumers and providers would continue to be afforded ample opportunity to be heard through the public hearings and by addressing the Commission on matters of concern. If the commission model were adopted, a major disadvantage would be that the ideal of citizen-provider collaboration in deciding on the addition and expansion of health facilities and services in the Commonwealth would not be realized. In addition, major providers, such as hospitals and nursing homes, would not have direct representation in the self-regulation of their respective industries. Providers would likely experience frustration in attempting to educate lay commissioners regarding the complex health care delivery system. Consumers might be inhibited from meaningful input in the decision-making process.

The issue of health care cost containment has received increasing public attention, due to substantial increases in health insurance premiums for employers, cutbacks in the Medicaid and Medicare programs and the continuing concerns about funding for indigent care. The General Assembly is faced with devising the best possible solutions to a difficult problem. The determination of the appropriate composition of the CON Board is a key decision in these efforts.

OTHER ISSUES RELATING TO HEALTH AND WELFARE

Sunrise Law for Health Occupations and Professions

Issue

Should Kentucky adopt a "sunrise law" containing criteria for legislators to use in evaluating the need to regulate presently unregulated health occupations and professions, such as lay midwives, physicians' assistants and dental laboratory technicians?

Background

Each biennium legislators are asked to enact practice and licensure acts for an ever increasing variety and number of health occupations and professions. To provide a comprehensive and systematic method to evaluate the necessity and desirability of statutory recognition, several states have enacted "sunrise laws." Proponents of statutory recognition must demonstrate, by satisfying criteria set out in the sunrise law, that the proposed legislation will enhance the public health and welfare. For example, proponents may be asked to show that consumers lack the necessary knowledge to evaluate practitioners of the health service in question. In such a case, licensure could guarantee minimal competence and thereby protect public health and welfare.

An issue for Kentucky is whether sunrise legislation is desirable and, if so, what criteria it should incorporate.

Continuation of Group Health Insurance Benefits

Issue

Should out-of-state health insurers be required to comply with KRS 304.18-110, on continuation of group health insurance benefits?

Background

The 1974 Kentucky General Assembly enacted KRS 304.18-110 to provide for the continuation of group health insurance coverage after termination of membership in the group. The statute was subsequently amended at the 1980 and 1982 Sessions of the General Assembly. The statute provides that when a person terminates employment or membership in a group, the insurance company must notify the employee of his right to continue the coverage for nine months. The employee also has the right to convert his group coverage to an individual policy. The statute protects a terminated employee from suddenly having no health insurance coverage. This is particularly important if the employee or the employee's spouse is pregnant. Since an insurance company will not provide maternity benefits before a new policy is nine months old, the terminated employee would have no maternity coverage if he didn't have the right to continue his current group coverage.

A recurring problem since the enactment of the statute has been the limitation on the applicability of the laws. The statute applies only to group health insurance policies "delivered or issued for delivery in this state." This restriction denies the benefits of the statute to those Kentuckians who are covered under a policy which was delivered or issued for delivery at the employer's headquarters, located in a state other than Kentucky. Whether Kentucky could subject policies issued in other states to the provisions of KRS 304.18-110 remains a question. However, on April 20, 1982, the Kentucky Supreme Court adopted the "grouping of contacts doctrine," in Breeding v. Massachusetts Idemnity and Life Insurance Co., 633 S.W. 2d 717 (Ky., 1982). In Breeding, an accidental life insurance policy was purchased in Kentucky from a car rental agency. The court held that Kentucky law applied, even though the master policy was delivered to the Delaware headquarters of the car rental agency. In light of Breeding, it would appear that the Kentucky General Assembly could amend KRS 304.18-110 to require compliance with its provisions by policies delivered in another state.

Price Disclosure in the Health Care Industry

Issue

Should hospitals, physicians and other providers be required to disclose their charges to consumers and employers?

Background

The steady rise in health care costs has prompted a serious examination of the underlying market forces in the health care industry. Most economists agree that heavy reliance on health insurance and a cost-based reimbursement system have resulted in relative insensitivity of consumers, employers and providers alike to the cost of care. This situation is changing rapidly. Consumers are being asked to pay a larger portion of their health care expenses through higher co-payments and deductibles on their insurance policies. Employers have reached the outer limits of their ability to subsidize the health insurance premiums of their employees. Medicare and Medicaid have enacted limitations on payments for hospital and physician services, causing greater cost-consciousness among health providers.

Consumer knowledge regarding the cost of health care services rendered is considered to be an essential ingredient in infusing more competitive market forces in the health care sector. Consumers are generally not provided information about charges in physician's offices or hospitals unless they specifically inquire; once admitted to a hospital, consumers lose control over the scope and quantity of services provided. The physician making the decision about hospital tests, procedures and length of stay of the patient may not be aware of the cost implications. In the case where the hospital bills the insurance company directly, the consumer never actually sees an itemized bill.

Employers are similarly not provided information comparing the cost of health services. This type of information is valuable in designing cost-effective health insurance coverage for employees. Such innovations as preferred provider organizations, wherein the employer agrees to pay for only those services delivered by certain cost-efficient providers, necessitate disclosure of comparative cost data. Other cost containment decisions, such as whether to mandate outpatient surgery or to contract with a health maintenance organization, depend upon the availability of cost data.

Approximately twenty states have enacted legislation requiring hospitals, physicians or other providers to disclose their charges. The statutes often designate a rate disclosure agency, which collects the information on hospital rates and budgets, physician fees, nursing home rates and other charges, and makes the information available to the public. For example, hospitals may be asked to post daily room rates and laboratory fees as well as average charges for common diagnoses. Physicians might be asked to make available fees for an initial office visit, follow-up visits, and visits in the hospital. Fees for common surgical procedures might also be requested. Information can be published in a yearly handbook, or publicized through the media in specific geographic areas.

Some providers have objected to price disclosure as a violation of professional ethical standards. It is argued that a lack of uniformity among hospital rate structures and physician fee schedules make comparison difficult. Another fear is that consumers may utilize low-cost providers without discriminating as to the quality of care delivered.

There is no evidence to show that rate disclosure programs alone have achieved significant reductions in health care cost inflation. However, rate disclosure is widely considered to be a necessary first step in increasing community awareness regarding the cost of health care, and in creating an environment where competitive market forces can begin to operate.

Family Responsibility

Issue

Should adult family members be required to make financial contributions to a parent residing in a nursing home when the care of the parent is financed by Medicaid?

Background

Since the enactment of the program in 1965, federal Medicaid law has prohibited the states from holding family members financially responsible for the costs of Medicaid services provided to a relative, except in two limited circumstances: where the beneficiary is a spouse, and where the beneficiary is a minor or disabled child. Further, since 1971 neither the Medicaid statute nor the regulations of the U. S. Department of Health and Human Services have permitted any state to force adult children to subsidize the nursing home care of their parents.

In February, 1983, however, the Health Care Financing Administration of the Department of Health and Human Services published a new guideline in the State Medicaid Manual which would permit states, under certain conditions, to require adult family members to support adult relatives without violating the federal Medicaid statute. Under the new policy, states would have the option to require family contributions if the requirement is made pursuant to a state-enacted statute of general applicability and not just as a Medicaid plan provision. That is, the law may be restricted to Medicaid recipients, but must apply to all nursing home patients. Further, the Medicaid applicant or recipient must actually receive the income, as opposed to the state's deeming it available to the recipient.

If such a law were enacted, the General Assembly would be able to determine who is a relative, how much relatives must contribute, and the methods of enforcement. Cabinet for Human Resources officials have determined that such legislation could result in a minimum savings of ten percent ($17.1 million) annually in the long-term care area.

Proponents of such legislation include the National Governors' Association and the American Health Care Association. Such groups think the proposal would aid the financially strapped Medicaid Program by conserving limited funds for those most in need. Opponents state that it would be impossible for states to enforce within and beyond state boundaries, administrative costs could be prohibitive, and filial responsibility laws represent unjustified government intrusion in family life.

Formaldehyde

Issue

Should Kentucky warn consumers of possible adverse health effects associated with exposure to formaldehyde vapors released from building materials and other substances?

Background

Formaldehyde is an integral ingredient in a wide variety of consumer products, including insulation and building materials. High concentrations of the chemical have been measured in manufactured housing, a type of housing used by a tenth of Kentucky's citizens.

In 1982 a federal agency banned insulation containing formaldehyde, because of adverse health effects experienced by some persons exposed to the insulation and because of its link with nasal cancer in laboratory rats. In April of 1983, a federal court vacated the agency's action on grounds that the evidence wasn't strong enough for a ban.

Scientific opinion is divided on the severity of the problem and on how many and what types of people are at risk. An issue for legislators is whether they should alert consumers to possible problems through product warnings and consumer education programs or wait until more is known.

Judicial

CONFIDENTIALITY OF ADOPTION RECORDS

Prepared by Pat Hopkins

Issue

Should adult adoptees be allowed access to their adoption records, including identity of birth parents?

Background

Kentucky follows the general pattern of adoption statutes in sealing adoption records, permitting opening only upon order of a court for good cause shown. This practice effectively prevents disclosure at any time of the identity of the birth parents to an adoptee or the identity taken by the adoptee to the birth parents.

Very recently, several states have made changes in their disclosure statutes. Some allow certain disclosures of genetic information for medical purposes, without disclosing identity. A very few have opted in favor of full disclosure. Kentucky adopted a sibling disclosure statute in 1982, allowing adult children to attempt to locate known siblings. Otherwise, Kentucky's law has remained the same.

There has been a nationwide push in the past ten years by adult adoptee organizations for access to adoption records. Members of these groups are interested in meeting their birth parents. They have made several appeals to the committee, bringing adopted adults with their birth parents to meetings to testify as to the circumstances and effect of their reunions.

Discussion

Three broad possibilities present themselves:

1. Leave the sealed adoption records statutes in place.

2. Permit disclosure of medical information, without disclosing identity of birth parents.

3. Permit full disclosure of all information to the adult adoptee.

The arguments presented were:

1. Sealed records -- Insures privacy of all parties, the birth parents, the adoptive parents and the adoptee. Prevents an adoptee from getting to know birth parents.

2. Medical information disclosure only -- Insures privacy to all parties but also allows disclosures which could be of inestimable value to the child in medical situations. Again, the adoptee is prevented

from getting acquainted with his birth parents.

3. Full disclosure -- Provides all information. Adoptee can become acquainted with birth parents. Privacy of all parties -- adoptee, adoptive parents and birth parents -- subject to invasion.

The legislature must weigh the rights of all these parties and attempt to legislate in such a manner as to be fair to all.

GUARDIANSHIP IN INCOMPETENCY CASES

Prepared by Pat Hopkins

Issue

Should KRS Chapter 387, relating to guardianship, which became effective July 15, 1982, be changed?

Background

In the 1980 session, an omnibus bill was introduced to effect widespread changes in the guardianship law of Kentucky. Problems had arisen in the public welfare and advocacy areas of state government when persons who had been declared incompetent applied for aid. In many instances, persons had been declared incompetent by the courts but no one had been appointed as guardian for the incompetent person. No one could act in his behalf in agreeing to medical or surgical treatment or in receiving any public assistance. Originally, the bill was to be merely a simple requirement for appointment of a guardian at the time a person was declared incompetent. The drafters, noting many other problems in the system, expanded the bill to its present size.

The bill was passed in 1980, to take effect in 1982. During the 1980-82 interim, the committee studied the bill in depth and made many changes, which were passed in 1982

Since July, 1982, the statute has been implemented by the courts. Problems have arisen in several areas, and these have been presented to the interim committee.

Discussion

The statute mandates the preparation of an interdisciplinary report on each person who is alleged to be incompetent. The report must be prepared after examination of the patient by three persons: a physician, a psychologist and a social worker. The cost of this examination, plus the report and the appearance of these examiners as witnesses at the hearing, must be borne by the county. The financial burden has become considerable in some counties.

An additional problem is the "forced embarrassment" and "coerced humiliation" for incompetents and their families. The alleged incompetent must appear at the public hearing on his case.

The cost of a separate jury trial in each case is another matter causing financial concern regarding the judicial budget. In Jefferson county, hearings are held nearly every day, necessitating a new jury each time.

Some complaints are heard concerning tracing of title to property handled by guardians. Suggestions as to proper filing of certificates of disability have been made.

The Legislative Research Commission has authorized the establishment of a subcommittee on guardianship to seek feasible appropriate solutions to the problems outlined above.

OTHER JUDICIAL ISSUES

Contributory Negligence

Issue

Should Kentucky abolish contributory negligence as an absolute bar to recovery and adopt legislatively the doctrine of comparative negligence, which weighs the comparative fault of the parties involved and directs that an award be made accordingly.

Background

The doctrine of contributory negligence in Kentucky was created by judicial decree rather than by an act of the General Assembly. Pursuant to this doctrine, one cannot recover at all if he is guilty of even a small amount of negligence. In recent years, there has been a move to abolish this doctrine and replace it with the doctrine of comparative negligence, which permits a consideration of the degree of fault of each of the parties involved and directs that an award be made accordingly. Presently, there are thirty-nine states that have adopted the doctrine of comparative negligence, many by legislative action, others by judicial decree. This obviously places Kentucky among the minority of states. In a recent article entitled "Contributory Negligence on the Decline," (Kentucky Bench and Bar, January, 1982), Glen Bagby pointed to some recent decisions in Kentucky which "may show a judicial path toward adoption of comparative negligence in Kentucky." There have been a number of attempts to replace the doctrine of contributory negligence in Kentucky with that of comparative negligence. In 1974, 1976, 1980 and 1982, legislation was considered by the General Assembly which would have abandoned the doctrine of contributory negligence. Undoubtedly, based on the past efforts, and the increasing dissatisfaction among many members of the Kentucky Bar with contributory negligence, there will be more attempts in the future.

Those advocating abandonment of the doctrine of contributory negligence present arguments based on the inequities of the doctrine and their conviction that if a person contributes a certain percentage to another person's injury, he should be responsible for that percentage of the award. Those who are in favor of the present system argue that if you adopt a doctrine of comparative negligence, you would allow a person to recover who shared in the wrongdoing.

Alternatives

1. Do nothing -- leaving the question to the courts. In effect, this will retain the doctrine of contributory negligence until changed by judicial decree.

2. Adopt the "pure" or "modified" form of comparative negligence. The "pure" form of comparative negligence apportions liability in direct proportion to fault in all cases. The "modified" form precludes recovery by the plaintiff if his negligence is equal to or greater than that of the defendant.

Capital Punishment

Issue

Should the General Assembly enact a new means of execution, leave the situation as is, or abolish capital punishment?

Background

At present there have been no executions in Kentucky since 1962. Although there are persons awaiting execution on death row, most of their cases are under appeal and there is doubt whether all will be executed. One segment of the population feels that electrocution, now the predominant method of execution in the United States, should not be abolished, that it is sufficiently humane, and that the death penalty represents a deterrent to crime.

Another portion of the population feels that the death penalty should remain in effect, but that a change should be made to a more humane method of execution. The method most frequently suggested is that of lethal injection, in which a combination of fast-acting paid killers and poison is injected into the veins of the condemned. This method was first used in an execution in Texas and is now authorized in several other states. Opponents state that the use of lethal injection under medical supervision is a contravention of medical ethics, while others question the painless nature of the combinations or the time required for the drugs to have the desired effect.

Another portion of the population feels that the death penalty itself is inappropriate. They feel that it is not a deterrent. Many oppose it on religious or moral grounds. They would replace the death penalty with life imprisonment or life imprisonment without parole or simply a long sentence without parole. Opponents of the life without parole system feel that it places the inmate in a situation where he can commit any future crime, such as escape, with impunity, since no additional penalty can be added to his life without parole sentence. Some penal authorities feel that these circumstances may create a less governable prisoner. Others site the cost of incarcerating a man for such long sentences and the consequent overcrowding of prisons, while others feel that capital punishment is still an appropriate penalty and should not be eliminated.

Drunk Driving Legislation

Issue

Should the General Assembly enact tougher drunk driving legislation and, if so, what form should it take?

Background

Deaths and injuries from drunk driving are increasing and it is alleged that drunk drivers are not punished severely enough for the deaths and injuries they cause, and that current laws do not deter drunk driving.

One proposal solution is to require mandatory jail time for drunk driving. This, proponents state, will increase awareness of drunk driving, appreciate the penalties, and deter drunk driving. Opponents state that this solution will increase the load on already overcrowded jails but not reduce drunk driving, since the contend that alcoholism is a disease and not treatable by incarceration. Increased fines are also advocated by the proponents of new legislation, as a means of calling attention to the problem and as a deterrent. Opponents argue that this would be a "rich man's law," whereby the wealthy could purchase their way out of trouble, while others argue that since the poor cannot pay they might escape punishment altogether. Another suggestion is to require mandatory alcohol education programs. Proponents say that this would more effectively treat the disease of alcoholism and might deter some persons from drinking and encourage alcoholics to seek treatment. Opponents argue that such a program may be too costly, while others argue that it would not constitute sufficient punishment. Lengthening license suspensions for drunk driving is yet another possibility. Supporters argue that this would keep the drunk driver off the road for a longer period time, cause him to think more seriously about his drinking problems, and be an effective deterrent to repeat offenses. Those opposed say that the person may lose his job and become a public charge or that he might continue to drive anyway. They also state that those under suspension cannot get insurance and thus if they have an accident the victims are less likely to be compensated. A compromise effort has been proposed whereby an "occupational" license would be issued, permitting driving to and from work or for emergencies, allowing the person to save his job and his insurance. Opponents argue that this practice would be difficult to police and that persons would cheat on the driving limitations. Various other proposals, such as mandatory public work, have also been put forth, but have been opposed because of the costs of supervision or possible legal liability on the part of supervisors.

Jury Sentencing vs. Judge Sentencing

Issue

Should Kentucky retain jury sentencing or move to judge sentencing?

Background

Judges and some others believe that jury sentencing in Kentucky is obsolete, leads to unfairness, and should be replaced by judge sentencing in criminal cases.

Jury sentencing has been the rule in Kentucky since the founding of the Commonwealth. Supporters of retention of jury sentencing argue that since a person may be tried by jury he should be sentenced by that jury. They feel that judge sentencing would be no fairer than the present method and that judges develop lenient or tough stands that may prejudice their sentencing. They also argue that sentences pronounced by judges vary as do those by juries. Opponents maintain that juries do not know the defendant's past record and frequently sentence on the appearance or the demeanor of the defendant. They also contend that jury sentences in the same court vary and that penalties are not uniform.

Supporters of judge sentencing argue that judges do the sentencing in nearly all criminal cases now. Only in cases tried by a jury is the sentence handed down by the jury. They contend that since the judge knows the past record of the defendant, the sentence can be more appropriate to the crime and that, over all, judge sentences are more consistent. Opponents believe that judge sentences can be consistently lenient or tough, depending on the nature of the judge, that when viewed on a statewide basis, judge sentences are also inconsistent, and that people who are tried by a jury have a right to be sentenced by that jury.

Some supporters of both views feel that a possible compromise would be dividing the trial into two phases, as is currently done in capital cases. In the first phase the jury considers the guilt or innocence of the defendant in the traditional manner, without knowing the past record of the defendant. If the defendant is found guilty the jury then examines the defendant's past record and other relevant information before deciding on the penalty. In this method the jury would then have the same information as the judge with regard to the defendant. Opponents of this system feel that it is unduly complicated, would lengthen trials, and would be more costly. They feel that while juries have little problem in determining guilt or innocence they generally have problems in assessing penalties and that a judge could make this determination much more expeditiously.

Labor and Industry

JOB TRAINING PARTNERSHIP ACT

Prepared by Cindy DeReamer

Issue

Should the 1984 General Assembly enact enabling legislation under the Job Training Partnership Act of 1982?

Background

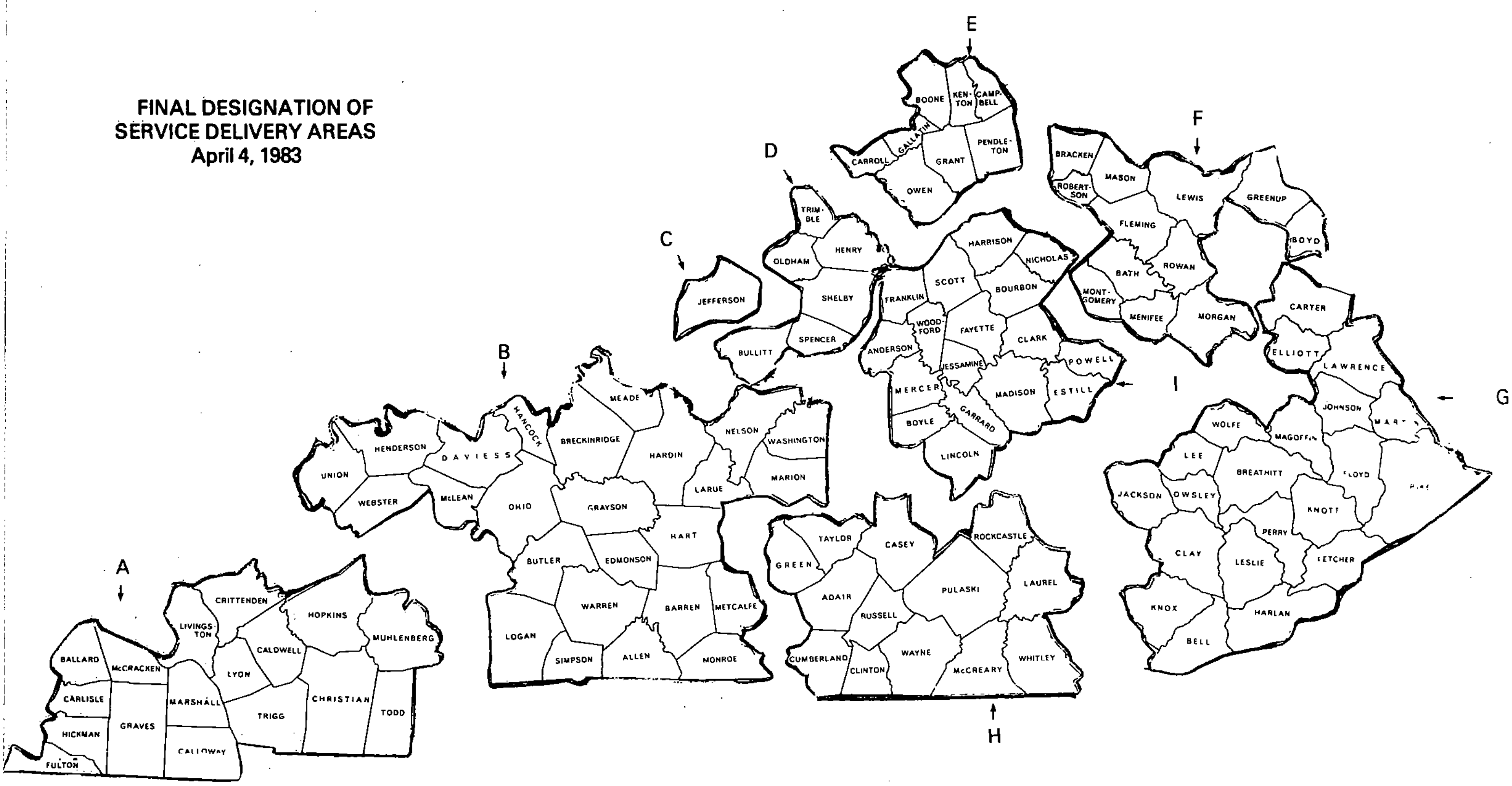
The Job Training Partnership Act (JTPA), P.L. 97-300, establishes programs to prepare unskilled youth and adults for employment. It does this by creating training opportunities for the economically disadvantaged and others who have serious barriers to employment. The act contains special provisions for summer youth employment and training programs, dislocated and older workers, native Americans, migrant and seasonal farm workers, and veterans. It also contains amendments to the Wagner-Peyser Act and the Social Security Act to implement these goals.

JTPA represents a major change in federal employment and training policy. Unlike previous federal programs in this field, it gives states and localities substantial choice about the direction of their own employment and training programs. A key factor to understanding JPTA is that these services are delivered on the local level through agreements by the public and private sector. Also, JPTA provides state legislatures, for the first time, with an opportunity to play a significant role in planning and overseeing policy for the increasingly important field of job training.

JTPA's emphasis on the partnership between the public and the private sector makes it very different from its predecessor, the Comprehensive Employment and Training Act (CETA). Unlike CETA, JTPA provides no funds for public service employment. JTPA is strictly concerned with training. Seventy percent of the approximately $38 million which Kentucky will receive under JTPA must be spent on training. The remaining 30% is divided between administrative and support services costs. Budgeting is further restricted by the fact that of the core training monies, only 5% can be used by the governor for administrative activities. Seventy-eight percent of the core training funds go directly to the local level on a formula basis. Of the core funds, 40% are targeted for youth. Of the total funds allocated under JTPA, 75% are for the disadvantaged.

The administration of JTPA is the responsibility of the governor, who divides the state into service delivery areas (SDA's). Each SDA appoints a private industry council (PIC). Membership of the PIC requires a variety of individuals to be appointed, but the majority will be from the private sector. More importantly, the PIC determines how funds will be spent on the local level. The mandated role of the state legislature is to review and to comment on SDA plans. The legislature may also advise the governor through membership on the Governor's State Job Coordinating Council.

In order to monitor implementation of the Act, a wage and hour subcommittee of the Interim Joint Committee on Labor and Industry has been established. Implementation is moving according to schedule, under the direction of the state's Manpower Services Division in the Cabinet for Human Resources, and by October, 1983, the program is expected to be operational. The map below shows the final SDA's, as designated by the governor:



FINAL DESIGNATION OF SERVICE DELIVERY AREAS
April 4, 1983

Discussion

As a form of block grant, JTPA will require major state involvement at both the executive and legislative levels. Legislative involvement is called for explicitly and implicitly in the act by references to the "state legislature" specifically and to "state law" generally. Although it is clear in the legislation that the governor has considerable administrative authority, the state legislature may define its own role under JTPA by enacting enabling legislation in 1984. The following highlights some of the areas which the 1984 General Assembly may want to consider in terms of possible legislation.

Under the Act, the state legislature has the right to review and comment on local job training plans. Service Delivery Areas must make these plans available for review and comment "to each house of the state legislature for appropriate referral" not less than 120 days before the beginning of the first of the two program years covered by the plan. The wage and hour subcommittee of the Interim Joint Committee on Labor and Industry, which has been established to monitor implementation of the Act, will be in a position to review SDA plans to assure the legislature that the local plans are in compliance with state law, as well as federal law, and with state priorities in economic development, in education, and in interagency and interprogram coordination.

JTPA also requires the state legislature to have representation on the Governor's State Job Training Coordinating Council. However, in this case, legislative input has been seriously lacking: the legislature was not consulted by the governor in the planning stages of the program, and there is no legislative representation on the Council, even though such representation is mandated by the federal Act. The 1984 General Assembly may want to enact legislation which defines its role to the Council and which assures its representation thereon.

The Act acknowledges the authority of the state legislature to enact implementing legislation for programs funded under the Act. This is an important first in federal employment and training laws, as it recognizes the constitutional role of legislatures as state policymaking bodies, as well as the importance of proper checks and balances. The state of Maryland has enacted legislation under the JTPA which establishes the program at the state level and sets out the manner in which funds will be distributed under the state act to the SDA's. Maryland has also established, in conjunction with JTPA, a pilot tuition assistance program for the unemployed in vocational or technical programs. The 1984 General Assembly may want to consider similar legislation in this state.

The state is also required to set up fiscal control and fund accounting procedures. Because of its fiscal responsibilities, the legislature may be responsible for this or for providing some direction for it to occur.

The legislature may want to have a policy role in establishing procedures for identifying eligible groups of dislocated workers for employment and training assistance.

Finally, the legislature will have an important role in providing the matching funds required for the state to qualify to receive funding for employment and training assistance for dislocated workers. This may be one of the most important functions for the legislature to carry out, as the Dislocated Worker's Program is generally seen as a most urgent function of the

Act.

As a result of JTPA, the legislature may, if it chooses to do so, become actively involved in the employment training, education, and the economic development decisions and budget considerations associated with the new job training program. (Information for this paper was obtained from the National Council of State Legislatures.)

UNEMPLOYMENT COMPENSATION

Prepared by Cindy DeReamer

Issue

What measures can the 1984 General Assembly take to generate sufficient funds to pay the interest owed on loans secured by the state from the federal unemployment trust fund for the payment of benefits?

Background

The unemployment insurance program in Kentucky, administered by the Division for Unemployment Insurance in the Cabinet for Human Resources, pays benefits to workers who become unemployed through no fault of their own. The cost of these benefits is paid solely by Kentucky employers, who must pay both state and federal taxes to maintain the unemployment insurance program.

The federal tax, which is currently 3.5% on the first $7,000 in wages paid to each covered employe, is used to finance all state and federal administrative costs of the unemployment compensation system, to pay fifty percent of extended benefits during periods of high unemployment, and to maintain a federal trust fund from which an individual state may borrow whenever it lacks funds to pay its unemloyment compensation benefits. However, employers pay only .8% on their taxable wages to the federal fund, because they are entitled to a credit of up to 2.7% on the federal tax if they pay contributions to a state unemployment insurance trust fund under a federally certified state law.

The state tax, which may be used only for the payment of benefits, ranges from 1.0% to 10.0% on the first $8,000 in wages paid to each covered employe. There are currently five statutory rate schedules to reflect the status of the unemployment insurance trust fund. When the fund is insolvent, the highest tax schedule is put into effect. The variance in rates within the tax schedule is dependent upon the employer's experience rating, that is, the rate derived by comparing the balance of his individual reserve account to his taxable payroll.

Until recently, Kentucky's UI trust fund was able to respond adequately to changing economic conditions. Reserves built up during prosperity were sufficient to meet increased benefit payments during recessions. Since 1981, however, the UI trust fund has been experiencing serious financial difficulty, and reserves have been depleted. The deterioration of the fund is due in large part to a higher than average unemployment rate. Also, the impact of changes made in the system which greatly expanded coverage was not fully apparent until it became clear that the trust fund would be depleted.

Thus, Kentucky was forced to borrow $52.1 million, interest free, from the federal government in February, 1981, to continue the payment of benefits to jobless workers. In 1982, the General Assembly enacted several changes to the UI system to restore solvency to the fund, including capping benefits and increasing employer contributions. Based on projections available at the time, the executive branch felt that the resulting benefit savings and revenue increases would preclude further borrowing and would restore solvency to the fund.

Loans from the federal trust fund are required to be paid back within a two-year period: any state defaulting on a loan will loose annually .3% of the credit otherwise allowable to its employers for each year the loan remains unpaid. The additional revenue collected by the federal government in this manner is used to offset the amount owed.

It now appears Kentucky will not be able to pay back the $52 million it owes by November 1, 1983, as required, and the state's employers will in all likelihood pay an additional .3% to the federal government on their unemployment taxes for calendar year 1983. This will increase each individual covered employer's total federal unemployment tax liability for 1983 from .8% to 1.1% on the first $7,000 paid to each covered employe. If the remainder of the loan is not repaid by November 10, 1984, the federal tax liability will increase again by another .3% to 1.4% on the $7,000 base.

An additional reduction of .3% would have accrued each year thereafter if Congress had not enacted the Omnibus Budget Reconciliation Act of 1981, which capped the reduction at .6% under certain conditions. This act contained several provisions granting relief to the 17 states owing collectively more than $5.5 billion to the federal trust fund. But, in order to encourage the states to enact legislation to restore solvency to their trust funds and at the same time to discourage additional borrowing, the act imposed an interest charge not to exceed 10% on loans to states made after April 1, 1982. In addition, states were enjoined from making interest payments from their trust fund accounts. In other words, states would have to impose higher taxes on employers, or appropriate funds to pay the interest. Loans strictly for cash flow purposes are exempted from the interest charge if they are paid back within the calendar year in which borrowed and no additional loans are needed.

By the end of March, 1982, Kentucky's total interest free loans amounted to $95.7 million. Following the 1982 legislative changes, however, Kentucky borrowed an additional $8.6 million in April, 1982, for cash flow purposes. During the summer of 1982 economic conditions improved somewhat and the number of benefit claims decreased, and Kentucky was able to pay back the $8.6 million in August, 1982, to avoid an interest charge.

By October, 1982, however, the insured unemployment rate began to increase, as economic conditions worsened. An additional $25.7 million was borrowed in December to pay benefits and, as a result of this loan, interest totalling $225,000 became payable on the $8.6 million borrowed in April.

The fact that interest was due and payable during 1982 was problematical for Kentucky, since Federal statutes prevent such payments from the state's unemployment insurance trust fund, directly or indirectly. Also, Kentucky's General Assembly would not be meeting to address this issue until 1984. Finally, a requested Attorney General's Opinion (82-541) concluded that funds in a U.I. Penalty and Interest Account could be used to pay the interest due in 1982.

By the end of that year, however, it became clear that the economic situation had deteriorated far beyond anyone's expectations. Total benefits paid from the trust fund for calendar year 1982 amounted to $343.3 million, while employer contributions totalled $234.8 million, resulting in a shortfall of more than $108 million. The loan balance as of December 31, 1982, equaled

$121.4 million, $25.7 million on which interest was accruing.

During the month of January, 1983, the insured unemployment rate reached a record 8.1 percent and for the first quarter of 1983 it was necessary to borrow an additional $85.7 million for the payment of benefits, bringing the total amount of interest-bearing loans to $111.4 million and total loan liability to $207.1 million.

In March, 1983, Congress enacted the Social Security Amendments of 1983, which includes provisions to provide yet additional relief to states owing interest on loans made subsequent to April 1, 1982.

Under the amendments, a state may qualify for deferral of 80 percent of the interest due for a fiscal year, effective for interest accrued in fiscal years 1983, 1984, and 1985. A state will be required to meet certain conditions to qualify for the deferral: a state must take no action to reduce its tax effort or trust fund solvency; and it must have taken action after March 31, 1982, which increases revenues and decreases benefits by a total of 25% the first year, and 35% and 50% the second and third years. Once a deferral is approved, the state must continue to maintain its solvency effort. Failure to do so will result in immediate payment of all deferred interest.

If a state does not pay interest charges when they are due, all federal administrative funds will be withheld and the state's unemployment compensation program will lose its certification. Under state law, if federal administrative funds are withheld, additional taxes may be levied by the state against the state's employers to recover the loss. Moreover, if the federal government withdraws its certification of a state's UI law, the state's employers will lose their 2.7% credit under the federal tax and must pay the full 3.5% tax to the federal government. More simply, failure to pay the interest would result in a loss of about $200 million to Kentucky's employers.

Discussion

The number one question facing the 1984 General Assembly is how to pay the interest due on loans from the federal government for the payment of benefits. Since federal law does not stipulate the source of funds for the payment of interest, except to prohibit a state from using funds in its unemployment insurance trust fund for such purposes, the practical result is that states having to continue to borrow from the federal fund for the payment of benefits will have either to impose higher taxes on employers to meet the interest payments, or to pay the interest charges from their general funds.

The states currently owing interest have chosen to address this problem in a variety of ways. For example, Michigan, owing more than $2 billion to the federal government, is imposing a solvency tax on its negative balance employers which will be used to pay the interest on its debt. Ohio's legislature, on the other hand, has been appropriating on a biennial basis the amount of interest due. Ohio is also a large debtor state and has borrowed more than $2.1 billion. Missouri, owing about $90 million as of December 30, 1982, enacted legislation which will permit the state agency to assess its employers on a yearly basis. The agency will project in June the amount of interest due and assess the state's employers on a pro rata basis in accordance with the size of each employer's payroll.

According to projections issued by the executive branch in October, 1982, Kentucky will have to make interest payments through 1986 as follows:

September 30, 1982	$ .25 million
September 30, 1983	$ 7.7 million
September 30, 1984	$ 10.2 million
September 30, 1985	$ 6.1 million
September 30, 1986	$ 1.7 million

If Kentucky qualifies for interest deferral in 1983 under the provisions of the Social Security Amendments of 1983, these projections would be reduced and payment of the interest would be extended over a longer period of time.

The following is a summary of possible legislation which the members of the 1984 General Assembly may want to consider in addressing the issue of interest payments.

General Fund Appropriation. In Kentucky, the legislature could simply set aside funds to pay the interest. Since the executive branch is capable of projecting the amount of interest due, it would be possible to know beforehand how much money would be needed to pay the interest during the biennium. A general fund appropriation would relieve the burden which would otherwise be placed on Kentucky employers if a surtax were levied to generate the additional revenue needed to pay the interest.

Penalty and Interest Account. Some consideration might be given to using funds in the P & I Account to pay the interest. In fact, funds from this account were used to make the state's first interest payment in 1982.

Under Kentucky law, contributions unpaid on the date they are due are subject to a penalty of one percent (1%) per month, not to exceed sixty percent (60%) of the amount of such contributions due. The penalties collected are deposited in the P & I Account and may be used for capital construction costs and for the administration of the program.

Although the funds in the P & I Account may be considered a viable source for the payment of interest, there simply isn't enough money in the account to cover interest costs in the years ahead. As of this writing, there was approximately $4.9 million in the account and about $350,000 was credited to the account in 1982.

Increase Penalty Provisions. The present penalty provisions, described above, have been in effect since 1939, when the unemployment insurance program was first enacted. If the penalties on unpaid contributions were increased, funds in the P & I Account would also increase. However, there is no information available at the present time to indicate whether sufficient funds for the payment of interest could be generated by simply increasing the penalty on unpaid contributions.

Employer Surtax or Assessment. The imposition of an interest charge is especially difficult when a state's employers are already paying contribution rates that are the highest in the nation; nevertheless, consideration of a surtax raises the debate over whether a state's employers should carry the burden of the increasing costs of growing unemployment.

A one-year employer surtax of .5% for instance, is capable of generating enough money for the payment of interest for the next five years. But legislators would want to take care in choosing an interest financing mechanism which generates so much revenue during the present economic conditions. Because the economy is slowly improving, it would be better, perhaps, to assess the state's employers on a yearly, pay-as-you-go basis, thereby spreading out the cost of the interest so long as it is owed. Under the annual assessment option, employers could be charged according to the size of their payroll without consideration of the balance of their reserve accounts. All employers would share the cost rather than just a few.

In any event, the interest, of course, must be paid. If action is not taken by the 1984 General Assembly to assure payment of the interest, the entire UI program in this state will be placed in serious jeopardy, and the state's employers will be unnecessarily burdened with a catastrophic increase in unemployment taxes.

COMPARABLE WORTH

Prepared by Linda Bussell and Joyce N. Crofts

Issue

Should the 1984 General Assembly mandate equal pay for jobs of comparable worth to reduce the continuing large wage differential between males and females in state government?

Background

Nearly two decades have passed since Congress enacted two historic remedies to eradicate sex discrimination in this country: the Equal Pay Act (EPA) of 1963 and Title VII of the Civil Rights Act of 1964 (Title VII).

Generally, the EPA, which was enacted as an amendment to the Fair Labor Standards Act of 1938, prohibits wage discrimination between males and females who perform work, in the same establishment, that is equal in skill, responsibility and effort. The "equal pay for equal work" standard does not apply to wages paid pursuant to established seniority systems, merit systems, production quantity and quota systems, or any factor other than sex.

Title VII of the Civil Rights Act of 1964 prohibits sex discrimination with respect to compensation and conditions of employment. The exceptions to the EPA listed above were made a part of Title VII by virtue of the Bennett Amendment.

Despite the enactment of these anti-discrimination statutes, the wage gap between male and female workers in this country has not narrowed. In fact, studies indicate that the wage gap may actually be increasing. According to 1981 figures from the U.S. Department of Labor, women workers earn, on the average, 59¢ for each $1 earned by men. Comparable figures for Kentucky show that in April 1983, women in the executive branch of state government earn on the average 79¢ for each $1 earned by men.

Wage differentials continue to exist, not only between males and females in Kentucky state government, but also between males and females in industry and government throughout the country. This fact is not disputed. However, there is considerable disagreement as to the causes of the wage differentials. Studies have indicated that education, job experience, and other factors account for only a small part of the wage differential in this country. Additional studies also indicate that a much larger part of the wage differential is attributable to job segregation by sex (a situation where the occupants of one job are predominately one sex). For example, according to 1982 figures from the U.S. Department of Labor, 99% of all secretaries were women and 97% of all typists were women.

As discussed elsewhere in this publication, the Program Review and Investigation Committee has recommended posting job vacancies and keeping a justification file for all promotions as a method to reduce the wage gap between males and females in state government. Another method being discussed is application of the concept of comparable worth. Comparable worth is gain-ing prominence in Kentucky and throughout the country.

Women's groups and labor unions have supported the concept of comparable worth since the early seventies and are currently hailing the concept as the major women's issue of the eighties. Approximately ten states are currently in the process of studying the comparable worth concept to determine its use in reducing the wage gaps between male and female employees. Such study is currently being conducted by the Legislative Research Commission as a result of a study resolution enacted by the 1982 General Assembly. This study is scheduled for completion in July.

The basic premise underlying the concept of comparable worth is that jobs requiring a comparable (not identical) degree of skill, responsibility and effort should be compensated equally. The EPA requires equal pay for equal work, which means that women must receive equal pay when performing the same work as men. For example, under the EPA, male and female telephone operators should be paid the same. Telephone operators and elevator operators are not paid the same because the jobs are not identical. Application of the concept of comparable worth would result in equal pay for jobs that are equal in value. In this example, elevator operators and telephone operators would be paid equally if the two jobs required a comparable degree of skill, effort and responsibility.

The origin of the comparable worth concept lies in the provisions of the EPA and Title VII. Prior to 1981, proponents of the comparable worth concept unsuccessfully argued that the scope of Title VII and its much debated Bennett Amendment was the appropriate avenue for suits challenging wage discrimination in occupations traditionally held by women. Finally, in June, 1981, the U.S. Supreme Court ruled, in the County of Washington, Oregon, et.al. vs. Gunther, et.al., U.S. (CA 9 1979) 602 F2d 882, Sup. Op. 623 F2d 1303, that Title VII of the Civil Rights Act does not limit sex-based wage discrimination suits to the narrow "equal pay for equal work" standard of the EPA. This decision was a major victory for proponents of comparable worth; if the Court had limited Title VII to the "equal pay for equal work" standard of the EPA, Title VII remedies would not be available to the majority of women workers, since reports indicate that four out of five women in the work force are segregated into traditionally female occupations, where "equal pay for equal work" comparisons are uncommon. Nationwide, evidence suggests that job segregation by sex is widespread and there are no clear signs that significant improvements are being made. The decision that Title VII can be applied to challenge pay inequity in a comparable worth situation is therefore viewed by proponents of comparable worth as a major step in the development of the law.

Since the County of Washington vs. Gunther decision was rendered, there has been a strong effort nationwide by women's groups to make comparable worth a major factor in traditional systems used to compensate employees in private industry and government.

Discussion

Consideration of the comparable worth concept raises very serious questions regarding the use of traditional job evaluation systems in resolving comparable worth issues.

Job evaluation systems have been used for more than one hundred years in this country. Job evaluation refers to a procedure used for heirarhically ordering a set of jobs or positions with respect to their value or worth, usually for the purpose of setting pay rates. There are several types of job evaluation systems but most share a similar methodology. The steps in job evaluation include job description, ranking of jobs, and assignment of pay scale to the jobs. Basically, there are four types of job evaluation systems: ranking, grading or classification, factor comparison and point methods. Generally, job evaluation is used to justify existing wages, streamline existing wage-setting systems, maintain control over wage-setting systems, or to make the wage-setting system more understandable to employees.

Comparable worth proponents feel that the traditional job evaluation methods are biased in several areas, especially in their heavy reliance on prevailing wage scales. Proponents feel that reliance on market rates institutionalize pay inequities. Also, women's groups are concerned that the large degree of subjectivity in job evaluation will result in the widespread and continued underevaluation of traditionally "women's" jobs. Although the proponents acknowledge that problems do exist in the ability of traditional job evaluation systems to achieve the comparable worth goal of pay equity, they are hopeful that less biased job evaluation systems can be developed by modifying the existing systems and exercising strict scrutiny in their application.

Opponents of comparable worth contend that any attempt to establish structural wage relationships without reliance on market rates and existing methods of job evaluation would be very difficult. While many opponents of comparable worth feel that pay equity between the sexes is inevitable, they do not feel that comparable worth is the appropriate vehicle to achieve pay equity, because of its vagueness and ambiguity. Opponents further contend that adoption of comparable worth will not only be an administrative nightmare but also will disrupt established business practices and result in serious problems for the economy of the nation.

Despite the controversy that surrounds the comparable worth issue, many states have taken steps to incorporate comparable worth in their compensation systems for public employees. According to one source, at least seventeen states, including Kentucky, have laws that contain comparable worth language. Most other state laws compensate employees on the basis of the "equal pay for equal work" standard of the EPA. Some confusion exists in the state laws that contain comparable worth language, because there has been minimal judicial interpretation to determine whether the statutes clearly require comparable worth pay or merely "equal pay for equal work". For example, KRS 337.423 contains language that presumably requires comparable worth pay. However, there is an exception in the language which provides that the comparable worth requirement does not apply to compensation of employees whose employers are subject to the Fair Labor Standards Act (FLSA) of 1938.

KRS 337.423 requires that:

> No employer shall discriminate between employes in the same establishment on the basis of sex, by paying wages to any employe in any occupation in this state at a rate less than the rate at which he pays an employe of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort and responsibility. Differentials which are paid pursuant

> to established seniority systems or merit increase systems, which do not discriminate on the basis of sex, are not within this prohibition provided, however, that nothing in KRS 337.420 to 337.433 and 337.992 shall apply to any employer who is subject to the federal fair standards act of 1938, as amended, when that act imposes comparable or greater requirements than contained in KRS 337.420 to 337.433 and 337.992 and when said employer files with the commissioner of the department of labor a statement that said employer is covered by the federal fair labor standards act of 1938, as amended.

If the 1984 General Assembly decided to adopt the comparable worth standard as a basis for compensating employees, it is possible that the FLSA exception might need to be removed from KRS 337.423.

The full impact that this change would have on the ailing state budget is not clear at this time. As stated earlier, the economic impact of the application of comparable worth is a source of concern to opponents and proponents of comparable worth. However, some states that have adopted legislation requiring that state employees be compensated on the basis of comparable worth, have reduced the burden on their state budgets by scheduling incremental comparable worth pay adjustments. For example, the recently enacted Minnesota law provides that in January of each year a list of inequitable job classifications and an estimate of the amount of money needed to remove these inequities is presented to the legislature for consideration and appropriation.

Considering the interest that has been generated by comparable worth, the conclusion can be drawn that comparable worth is a major issue and one that will not likely disappear, as women's groups and labor unions continue to exert pressure for pay equity between males and females.

RIGHT-TO-WORK

Prepared by Linda Bussell

Issue

Should the 1984 General Assembly enact right-to-work legislation?

Background

Right-to-work legislation is usually defined as legislation which probihits the abridgement of an employe's right to work by the requirement that the employe, as a condition of employment, join a union.

The scope of the right-to-work issue can be understood only by reference to the federal legislation which regulates labor relations policy in this country - the National Labor Relations Act (NLRA), or the Wagner Act, which was enacted by Congress in 1935. This legislation guaranteed employes the right to joint unions, to bargain collectively with their employers and to participate in other union activities. The legislation requires unions to represent fairly and equally all employes in a bargaining unit and authorizes union security agreements between employers and employes. The most common types of union security agreements are:

"union-shop"	-	an agreement between a union and an employer in which all present and new employes are required to become union members within a specified period of time following initial employment.
"agency-shop"	-	an agreement between a union and an employer in which union membership is not expressly required but employes are required to pay union initiation fees and periodic dues.
"maintenance of membership"	-	an agreement between a union and employer in which, as a condition of employment, all employes who are or who become union members must maintain their membership for the duration of the union contract.
"hiring-hall"	-	an exclusive hiring hall agreement is one in which the employer agrees to hire only employes referred to it by the union; a non-exclusive hiring hall agreement is one in which the employer may hire non-union employes.

Approximately ninety percent of all union agreements in the country contain union shop agreements. The Wagner Act provided that in union shop agreements newly hired employes, as a condition of continued employment, must join the union within thirty days following initial employment. The United States Supreme Court has ruled that the union membership requirement is satisfied by the agreement of employes to pay union initiation fees and periodic dues but that the employes cannot be forced to actually join the union in the sense that the employe is required to take a union's oath of obligation, attend union meetings or fulfill any other union obligations. The requirement that employes pay union initiation and periodic dues prevents "free-riders," employes who accept the benefits of unionization (wage increases, fringe benefits, etc.) without paying their fair share.

In 1947, Congress amended the Wagner Act by enacting section 14b of the Taft-Hartley Act. This amendment authorized states to prohibit union security agreements (as described above) by enacting right-to-work legislation. Following the passage of the Taft-Hartley amendment, states began regulating union security agreements by right-to-work legislation or by constitutional amendments. Currently twenty states have enacted right-to-work legislation: Alabama, Arizona, Arkansas, Florida, Georgia, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and Wyoming.

Right-to-work legislation has been introduced in the Kentucky General Assembly on several occasions. In 1982, a right-to-work bill was introduced but was not enacted. Currently, a right-to-work bill (BR 135) has been pre-filed and will be introduced when the next General Assembly convenes in January, 1984.

Support for the enactment of right-to-work legislation has been mounting steadily since the unsuccessful attempt during the 1982 session of the General Assembly. Currently, the right-to-work issue is a source of great controversy in Kentucky and has become a major factor in the upcoming gubernatorial election. Supporters contend that the absence of a right-to-work law hinders the state's ability to attract industry. They support their position by referring to plant location studies which cite right-to-work legislation as one of the major factors considered in the decision-making process of plant location.

Discussion

It is generally agreed that the growth of the labor union movement and the enactment of the Wagner Act was stimulated by the abuse and mistreatment of some employes by their employers. Fifty years ago, the unions were small and ineffectual and management wielded virtually all power in the industrial community. During this period, some employers required employes to sign contracts ("yellow-dog" contracts) promising never to join a union; violation of this provision resulted in dismissal.

Likewise, it is generally agreed that states have exercised their option to enact right-to-work legislation to curb abuses of powerful labor unions. Supporters of right-to-work legislation believe that Congress, in an attempt to stop employer abuses, granted unions too much power in the provisions of the Wagner Act. They feel that the Wagner Act replaced discrimination against union partisans with discrimination against non-union members, by the authorization of union shop agreements which require that newly hired employes join a union to retain their jobs.

Union supporters complain that the term "right-to-work" is extremely misleading, since it has nothing to do with creating jobs or conferring or estabishing a right to employment. Rather, union supporters feel that right-to-work legislation has one major goal - to significantly weaken or destroy the labor union movement in this country.

The nationwide recession has had a devastating impact on the economy of Kentucky. Like many states, Kentucky has experienced record-breaking unemployment because of massive employe-layoffs and numerous plant closings. One reason purported to be a major cause of this problem is excessive union wages and demands. Proponents of right-to-work legislation contend that enactment of such legislation would attract industry to Kentucky, thereby reducing unemployment.

The impact that right-to-work legislation would have on the labor union movement in Kentucky is difficult to determine. The legislation that exists in the twenty right-to-work states differs widely in scope and remedies. The provisions of the legislation that has been pre-filed in Kentucky prohibit any union security agreement which would condition employment on membership in a union, prohibit the deduction of union dues without the written contract of employes, and impose a penalty for violation of these provisions.

Although there have been many attempts, no state has enacted right-to-work legislation since 1958. Indiana repealed its right-to-work law in 1965.

OTHER ISSUES IN LABOR AND INDUSTRY

Prevailing Wage

Issue

Should the 1984 General Assembly enact legislation to clarify the definitions and exemptions in the prevailing wage law?

Background

The 1982 General Assembly enacted legislation that contained major revisions in Kentucky's prevailing wage law. The legislation increased the size of the publicly-financed construction projects covered by the law and exempted construction projects constructed by local governments.

Since the passage of the law in 1982, there has been some disagreement concerning the projects that are actually exempted from coverage. Specifically, a dispute has arisen as to whether all construction of institutions of learning is exempted and whether construction by political subdivisions is exempted. The 1984 legislature might consider legislation to provide clarification in these areas.

Workers' Compensation

Issue

Should the 1984 General Assembly revise the rehabilitation and permanent partial disability provisions in Kentucky's workers' compensation program?

Background

During the 1980 and 1982 sessions of the General Assembly, major revisions were made in the benefit provisions and financing mechanisms in the workers' compensation law.

In the upcoming 1984 session of the General Assembly, the legislature might consider legislation which would amend the rehabilitation and permanent partial disability provisions in the workers' compensation law.

In addition, several legislators have expressed an interest in reviewing the permanent partial disability benefit provisions. In 1980, the length of time an injured worker was eligible to receive permanent partial benefits was reduced from lifetime to 425 weeks. There is concern that this benefit reduction imposes a severe hardship on catastrophic permanent partial disability cases.

Although changes were made in the rehabilitation provisions in the 1980 workers' compensation legislation, several legislators feel that additional changes are needed to strengthen the incentives for injured workers to participate in an approved rehabilitation program. These legislators feel that the role of rehabilitation in workers' compensation cases should be strengthened and that timely rehabilitation evaluation is imperative to reduce the amount of time an injured worker is away from his job.

State Government

STATE PERSONNEL CLASSIFICATION, COMPENSATION AND EVALUATION

Prepared by Joyce Honaker and Others

Issue

Should the General Assembly further specify by statute standards and procedures for the classification, compensation and evaluation of state employees, and for appeals from such actions?

Background

In February, 1980, the Governor's Executive Management Commission recommended revisions in the state personnel system. These recommendations included review of the personnel classification and compensation system, reduction in the number of classifications, implementation of a new compensation system, regular updating of the compensation and classification systems, elimination of the automatic annual salary increment and establishing uniform employee performance evaluation for all state agencies to use and a uniform system of granting merit increases.[1]

Effective June 16, 1982, a new job classification and compensation plan became effective for state government employment. Following preliminary testing in the Fall of 1982, an employee performance evaluation system, entitled the Work Planning and Performance Review (WPPR) system, was formally instituted in January, 1983, as a mechanism for determining whether and in what amounts meritorious performance pay increases are awarded to state employees. State employees retained a 5% automatic annual increment in salaries, contrary to the Governor's Executive Management Commission's recommendation, due to the 1982 General Assembly's enactment of legislation mandating the increment,[2] which had previously been prescribed by administrative regulation.

The stated goals of the new classification, compensation and evaluation systems are to improve efficiency and productivity by ensuring that employees performing similar duties are placed in the same or similar job classes, providing internally equitable and externally competitive salaries for state government jobs, using standard compensation principles and practices and establishing a fair and valid performance appraisal system for state government.[3]

The classification, compensation and performance review changes have become a legislative issue, due to state employees' concerns and complaints about the design and implementation of the three systems. These concerns stemmed in part from earlier implementation of Governor John Y. Brown, Jr.'s policy of reducing the number of permanent, full-time state government employees. As an interim legislative subcommittee found, during 1980-81, new employees were hired in job classes from which existing state employees were laid off because of the lack of a policy and program for transferring current employees from agencies that no longer needed them to agencies that did.[4] As initially designed, the classification and compensation system revisions also favored new and shorter-term employees over those with longer service, which some employees viewed as reaffirming a policy against career state employment.

These concerns were presented to the Interim Joint Committee on State Government's Subcommittee on Personnel and the Program Review and Investigations Committee, which are conducting a 1982-83 interim study of the personnel system changes.

There are three distinct but related components in the personnel system changes:

(1) A new job classification plan;

(2) A new compensation schedule; and

(3) A new pay-for-performance program (WPPR).

Development and initial implementation of the new classification plan involved describing the duties and minimum qualifications for each job in the executive branch through completion of a Position Description Questionnaire (PDQ); using the PDQ information to group the same and similar jobs into job classes and assigning a job title to each job class; reducing the number of job classes (and, hence, job titles) in the executive branch from 1,800 to 1,220.

Development and initial implementation of the new compensation schedule involved conducting a salary survey of public and private industry to determine the going rate outside employers pay for jobs comparable to a selected set of fifty jobs in state government. The Department of Personnel then designed a pay structure by setting the minimum and maximum salaries to be paid in the executive branch, the percentage difference that should exist between the minimum and maximum pay within each pay grade, and the percentage difference that should exist between pay grades.

The new pay structure made the following changes in the former pay structure:

(1) It reduced the number of pay grades from 19 to 16 in the classified service and from 22 to 20 in the unclassified service.

(2) It reduced the percentage difference between the minimum and maximum salary in each pay grade from 89% to 60%.

(3) It changed from a pay plan with 14 steps in each pay grade to grades designed with a mid-point, minimum and maximum, as in the following example:

	Minimum	Mid-Point	Maximum
Grade X	$1,000	$1,300	$1,600

A key step in the implementation of the new classification and compensation plans was the matching of new job classes with the new pay grades. Regression analysis, using the salary survey data and a ranking of state jobs relative to one another (based on the Jacob's Point Factor System), was employed in making the assignment of job classes to pay grades.

As a result of the reduction of the percentage spread in pay grades, from 89% to 60%, 10.9% of the employees in the executive branch were initially "red-circled" (that is, their salaries were beyond the salary maximum for their classifications). From the viewpoint of the designers of the new systems, these employees were being paid more than their jobs were worth.

As the new system was initially conceived, the June 16, 1982, changes would not mean that "red-circled" employees were to receive a pay cut, but that they were to remain at their present pay levels until their job classification's pay grade caught up with their pay level through annual adjustments of the pay plan. The 1982 General Assembly, in mandating an automatic annual increment for all employees, permitted the red-circled employees' pay to increase 5% per year. Initial regulations governing the pay-for-performance program denied performance pay increase to red-circled employees. Later, however, the Personnel Department and Personnel Board amended their regulations to allow the red-circled employee to receive his performance increase pay as a lump-sum payment which is not added to his base pay.

The pay-for-performance program is based upon a results-oriented performance measurement tool, a five-point rating schedule, and a graduated percentage-of-pay award for performance. WPPR is based on a written, results-based "contract" between the employee and supervisor. WPPR regulations calls for performance-based pay increases to be given annually. The amount of performance pay will be a percentage of the mid-point of the employee's pay grade and not a percentage of his base pay, as is the case with the automatic annual increment. The percentages assigned to the ratings are as follows:

Performance	Rating	Percent of Pay Grade Mid-Point Awarded
Outstanding	5	5
Above Standard	4	3
Satisfactory	3	1 1/2
Below Standard	2	0
Unsatisfactory	1	0

The major employees' complaints regarding the personnel system revisions have been that they were instituted too quickly and with insufficient information and expertise; problems in each of the three components were compounded by their simultaneous development and implementation; the classification and compensation changes, in reducing job classes and the width of pay grades, downgrade the worth of longevity, penalize longer-service employees, and result in age discrimination; and employees' performance ratings may be negatively affected by the lack of funds to pay the higher percentage increments associated with higher performance scores.

Problems with the initial personnel system reforms have resulted in several changes in the new program and the administrative regulations governing them. The development and implementation of the classification, compensation and evaluation plans have also resulted in 1,400 appeals to the Personnel Board, which is charged by KRS Chapter 18A with hearing employees' appeals from penalizations and with adopting regulations governing merit system employees. The latter duty is shared with the Department of Personnel. The Board has attempted to hear the appeals within the statutory time limit of ninety days by establishing new procedures and by consolidating cases. These solutions to the Board's workload have raised questions concerning due process and the extent of the employees' rights to appeal personnel actions.

Discussion

The Department of Personnel and the Personnel Board have designed and implemented the new classification, compensation and evaluation systems and the management of the appeals process under generally broad grants of authority in KRS Chapter 18A. For example, regarding employee evaluation, KRS 18A.030 simply states that, "[i]t shall be the duty of the commissioner [of personnel] ...to...prepare, in cooperation with appointing authorities and others, programs for appraising employe work performance...."

Whether the General Assembly wants to modify or continue the recently instituted personnel pay, classification and evaluation systems, it will need to more specifically address, by statute, the structures and processes to be used in personnel administration to assure that legislative policies are instituted and continued. For example, the General Assembly might decide to enact a salary schedule or schedules for state employment in lieu of delegating this responsibility to the executive. Precedent for direct legislative involvement in salary-setting exists in Kentucky with respect to teachers' compensation, and in other states with respect to state employees' pay. The appropriate balance between legislative specificity and administrative discretion will need to be determined by the 1984 session of the General Assembly.

Notes

1. Governor's Executive Management Commission 1980, Findings and Recommendations, Volume II (Frankfort, Kentucky: February, 1980), pp.98-99.

2. Kentucky General Assembly, Kentucky Acts, 1982, Chapter 452 (Frankfort, Kentucky: Legislative Research Commission, July, 1982) pp. 1631-1632.

3. Kentucky Department of Personnel, "Personnel System Reforms: Purpose, Methodology and Project Results to Date," August 25, 1982.

4. Legislative Research Commission Staff Memorandum to Members: Subcommittee on Personnel and Government Operations, Interim Joint Committee on State Government, regarding Lay-offs of State Employees, December 22, 1981, pp. 5-6.

STATE AGENCY JOB OPENINGS AND PROMOTIONS

Prepared by Linda Carroll

Issue

Should KRS Chapter 18A be amended to require the Department of Personnel to post job vacancies on agency bulletin boards and to keep a justification file for all promotions?

Background

In February of 1981, the Program Review and Investigations Committee was asked to review state employees' salaries. Prior to this, two studies had pointed to a wage differential between male and female state employees. The Human Rights Commission, in its fifth edition of "The Status of Women in Kentucky State Agencies," stated that women in state government annually earned $3,466 less than male employees. The differential was attributed, in part, to a heavy concentration of women in lower pay grades. More than seventy percent of the women were in the bottom half of the pay grades, compared to forty-nine percent of the males.

Further evidence of a wage gap was illustrated in the Kentucky Retirement System's Annual Actuarial Valuation. The document showed a gap, based on years of service, ranging from $736 among males and females working 40 years or more for the state to $6,892 between males and females working 35 to 39 years.

The Program Review and Investigations Committee conducted an analysis of salaries by job categories. The findings were in keeping with previous comparisons of male and female wages. They showed that although women outnumbered men in most of the classes, the men were in the majority in the upper steps of the range and a differential in favor of men was prevalent. Although discrimination is frequently blamed for the wage differential, there is no concrete evidence that discriminatory activities take place in the Commonwealth.

Yet, a survey of state employees showed that twenty-eight percent of female state employees felt that their sex had hindered their career in state government, and twenty-five percent indicated they were never made aware of promotion opportunities. The lack of adequate recordkeeping systems and job posting requirements in the Department of Personnel or agency personnel offices prevents the documentation of any discrimination which may exist. Consequently, the potential for discrimination exists until files are maintained and job openings are posted.

Discussion

In response to a recommendation made by the Program Review and Investigations Committee, the Department of Personnel has taken steps toward improving promotional opportunities by implementing an Internal Promotion Program. As recommended, the Department now posts all openings for seven to ten days. In addition, first priority in filling vacant positions is given to individuals within the agency.

Another recommendation made by the Program Review and Investigations Committee pertained to the recordkeeping of the Department of Personnel and agency personnel offices. This recommendation was that agencies keep several specific documents which would justify the selection of an individual for hiring or promotion. The Department's program accomplishes this and also provides for more active involvement of the agency Equal Employment Opportunity Coordinator. The EEO Coordinator must certify the adequacy of the applicants in the agency, or otherwise obtain the state register and incorporate those qualified applicants in the selection process. The agency personnel officers are instructed to maintain relevant files which pertain to the promotional program for the Department of Personnel to evaluate.

The implementation of the Department of Personnel's Internal Promotion Program is based on administrative procedures rather than regulatory or statutory mandates. By leaving responsibility for continued operation of the program with the Department of Personnel there is no assurance that it will not be changed or that it will continue to be implemented by future administrations.

The specifics of the hiring and promotional program now existing in the Department of Personnel could be stipulated by statute or regulation or combinations thereof. As is often the case, a broad requirement for such a program could be established by statute. The regulations might then list the more detailed requirements pertaining to promotional and recordkeeping policies, as well as the involvement of the EEO Coordinator.

PROMOTION FROM WITHIN

Prepared by Jeff Kell

Issue

Should state government support a policy of "promotion from within" for merit and non-merit employees?

Background

Most people in a position in state government to hire employees are males. Also, at the beginning of an administration, new Commissioners and Division Directors (who tend to be males) often bring in their associates, sometimes at the expense of qualified career employees. On the other hand, newly appointed Commissioners and Division Directors are traditionally seen as having the prerogative of being able to bring in their own team, loyalty being the most important and maybe the sole qualification required.

The LRC Program Review and Investigations Committee study, Salary Differentials Between Men and Women in Kentucky State Government, pointed out that there is a lack of standard procedures for evaluation of applicants for merit of non-merit vacancies. There are no requirements for competitive examination between employees with permanent status when they are considered for promotion. Both these factors, coupled with a general lack of awareness of vacancies when they occur, have contributed to discrimination against minorities and women. Persons are often brought in from outside government or outside an agency because there are no requirements to search first for qualified applicants within the agency. This means that qualified females and members of other minorities within an agency tend not to find out about vacancies or get the chance to apply before they are filled.

Discussion

One way to reduce the tendency of newly appointed managers to arbitrarily ignore the possibility of filling vacancies by promoting qualified employees, and to help combat the tendency of males to promote males, would be a statement of policy incorporated into the Kentucky Revised Statutes. The consequence of enacting such a policy would be to restrict the flexibility of a manager to hire or promote whom he wants. It should, however, benefit employee morale and lead to a better qualified state employee population. This policy would not contravene existing examinations or merit system register procedures, and would give qualified individuals, especially members of minority groups, the chance to apply and be considered when positions are filled.

Commonwealth Capital Construction

Issue

Should funds be provided for major maintenance, repairs and renovation of state-owned buildings?

Discussion

During the sixties and seventies considerable construction was undertaken by state agencies and institutions of higher education. At the latter it is conservatively estimated that 85% of the buildings that will be used in the year 2,000 already exist today.

As these buildings age, the mechanical systems, roofs, plumbing, flooring and electrical systems will require major maintenance or overhaul. If funds are not provided for these systems' maintenance and repair, the cost will escalate later. A repair job estimated to cost $95,000 in 1980 but not funded was done as an emergency in 1983 at a cost of $187,000. This was an increase of 96%.

Computer Services Contracts

Issue

Should computer services contracts be discouraged or limited in some way by law?

Background

The LRC Program Review and Investigations Committee report, Computer Services Contracts, pointed out that ever since computers came into existence, state government has faced questions about how to purchase or acquire hardware and software. Most of the hardware purchased by the state over the past twenty years has been manufactured by IBM, and although hardware contracts have had their share of controversy, they are not the issue here.

The most controversial contracts have been those to outside contractors for systems development work. These are usually large scale projects, sometimes for an individual agency and sometimes for centralized systems affecting many agencies. The justifications given for contracting for this work are typically that the quantity of qualified manpower required is not available in-house, it's a one-shot effort that does not justify hiring permanent employees to perform, or that there is a short time frame that requires a lot of extra help. The validity of these reasons is sometimes questioned.

The Legislative Personal Services Contract Review Subcommittee acts as an oversight body for all personal services contracts, including those for computer services. Computer hardware purchases are made through the model procurement code process and are not reviewed by the Subcommittee.

At present the Subcommittee may approve or disapprove contracts, but its decisions may be overridden by the Secretary of Finance. Alternatives to this procedure are:

1. Give the Subcommittee veto power over contract procurement.

2. Make computer personal services contracts subject to competitive bid and evaluation procedures that are incorporated into regulation or statute.

Alternative #1 is subject to the outcome of the legislative powers suit, although it would be possible to require the executive branch to limit contracts to those that can be run through and approved by the Subcommittee during the session. This option would reduce the potential for sweetheart contracts, at the expense of executive flexibility.

Alternative #2 is now being handled in part by administrative procedures; however, there is a definition question regarding what constitutes "best and lowest." The main problem, though, is that any existing procedures can be changed quickly and without review. Incorporating bidding and evaluation requirements into regulations or statutes, again, limits flexibility but

- assures greater continuity of procedures and thus less confusion;

- provides for a forum to review any changes; and
- decreases the potential for sweetheart contracts.

Transportation

STATE ASSISTANCE FOR LOCAL ROAD CONSTRUCTION AND MAINTENANCE

Prepared by James Monsour

Issue

Should the General Assembly change the financing or administration of the County and Municipal Road programs?

Background

The condition of local roads has been an ongoing concern of the Kentucky General Assembly since 1936, when legislation providing state funds for roads under county jurisdictions was first passed. In 1972, a similar program was enacted to provide state assistance for city street systems. During the life of these programs, now known by the names County Road Aid and Municipal Aid, the role of the state, as well as the administering of its financial assistance, has changed several times. The most recent changes occurred in 1980, when House Bill 973 abolished the Division of Rural Roads, and transferred the administration of these programs from the Department of Transportation to the Department of Finance. At the same time funding was increased from 10 percent to 15.6 percent of motor fuels tax revenues for the County Road Aid program and from 5.5 percent to 6.7 percent for the Municipal Aid program.

Despite the increases in revenues for these programs from approximately $29 million annually prior to 1980 to the more than $43 million available this current fiscal year, many if not all of Kentucky's cities and counties are unable to provide the level of service necessary to preserve their investment to date in local roads. Nor are they able to prevent or even slow down deterioration of the local road mileage, half of which has been identified as substandard by the Federal Highway Administration, state and local officials and the road construction industry.

The reasons our local governments find themselves in this predicament are many and varied. They can be traced to external factors beyond the control of local officials, such as inflation and the state of the economy, or to the present way local road programs are financed and administered.

In regard to the financing of county roads, KRS 177.360 provides that money be allocated to the counties according to a formula that considers rural population, rural miles of road and other factors. Allocations range from approximately $100,000 for Kentucky's smallest county, Robertson, to $700,000 for its largest, Pike. The financing of municipal roads is based on a city or town's population, as provided by KRS 177.366 and determined according to the most recent census. Allocations range from $242 to Caseyville in Union County, to $1.9 million to Louisville. Considering the costs of road building, a local road program cannot be undertaken solely on revenues of this size. Indeed, in most cases, these sums are scarcely adequate for the purchase of the necessary materials, to say nothing of the equipment, labor and engineering expertise required to operate a local road department. Similarly, funding levels in this range cannot provide more than a modicum of road maintenance if a local government chooses to contract with private industry for its road work. Many counties, therefore, must rely on other sources of revenue to supplement their county road aid allocation. Approximately fifty counties utilize coal severance tax revenues and/or local economic assistance funds in this manner, dedicating a portion of these monies to local road programs. Additionally, cities and counties have employed federal revenue sharing money or local taxes for this purpose. In the past three years, however, revenues available for local roads from these sources have declined markedly while road maintenance and construction costs have continued to rise.

In summary, as extensive testimony during the interim has shown, the present financing of local road maintenance and construction does not meet identified needs. Consequently, necessary repairs are being deferred, increasing not only the future cost of maintenance as local road systems age, but also the gap between available revenues and the amount of road work cities and counties will be able to accomplish.

Compounding the problems associated with financing local roads is the manner in which maintenance and construction on these roads is administered. House Bill 973 provided both that allocations from these programs be sent directly to the local governments and that they alone determine the roads for which these funds would be used. In the case of the counties, at the time House Bill 973 became effective forty-nine counties played little or no role in providing road maintenance on local roads under their jurisdiction. Historically, these counties contracted with the state Bureau of Highways, the former program administrator, to perform needed road improvements, utilizing state equipment and work forces. Now, however, because the program is administered by the Finance and Administration Cabinet, this option is not available. Hence, many counties have not been able to duplicate service levels of 1980. A secondary and related consequence of House Bill 973, the inability of cities and counties to utilize technical assistance and engineering expertise attached to the Transportation Cabinet, has also increased the costs of undertaking local road programs. Now many counties must employ private contractors and engineering consultants to plan their road work, to test materials and to assess job specifications. Many others, however, cannot afford professional road builders, and therefore, like most of Kentucky's smaller cities, utilize "seat of the pants" engineering in their road programs.

Finally, by abolishing the Division of Rural Roads, House Bill 973 affected the continuity of local road programs. Previously both the roads to receive funding and the type of improvements to be funded were determined by local officials in consultation with the Bureau's engineers. Continuity and future planning for local road programs prior to 1980 was insured. Under the present arrangement, however, local officials, frequently acting without professional advice, are not as likely to be in a position to plan program needs beyond their term of office.

Discussion

The passage of House Bill 973 has been a mixed blessing for Kentucky's local governments. On one hand it increased the amount of state assistance for local road maintenance and construction, but on the other, it left those counties which formerly relied on the state to provide local road maintenance unable to duplicate former service levels.

Because local roads serve as the initial point for much of the state's surface transportation, especially in the transport of natural resources and agricultural commodities, because they constitute a majority (62 percent) of Kentucky's total highway mileage, and because they are recognized as being in worse condition than high volume roads under the jurisdiction of the federal and state governments, it has been argued that increased state assistance is justified. Two sources of funding are presently available within the Transportation Cabinet and could be applied to the County Road Aid program, but legislation or budget adjustments would be required. These are the Transportation Cabinet's administration budget, and the Secretary of Transportation's emergency fund, $30 million of which was available for use on rural roads prior to 1980.

It has been argued further that the state possesses certain advantages over local governments in its ability to solve road problems, and hence is the logical place to start when considering legislative changes in the financing of local road programs. Among these advantages are a diversified tax base, allowing the collection of revenues fiscal courts cannot collect, such as those resulting from sales and use tax, vehicle registration and the motor fuels tax. The state also has the ability to pay the kind of salaries commanded by engineers and other technicians necessary for a road program. Lastly, the Transportation Cabinet has sufficient equipment on hand to service the roads under its jurisdiction, and could therefore, under a legislative directive, assist local governments in the acquisition of road equipment through state price contracts.

Administratively, local governments have three options regarding local road maintenance. They can contract with private road contractors; they can establish their own garage and work crews and purchase their own road equipment; or they can join together with adjacent governments, city or county, and share technical expertise, equipment and materials. The third option has proven the most cost-effective but, unfortunately, the least popular means of local road administration. At this time, only one district road department has been formed, and only one county presently performs the road work for all cities within its boundaries. In terms of the amount of work accomplished these arrangements have been termed a success, but detractors point out that the paving accomplished to date does not meet industry or state specifications, and hence will contribute to additional costs for future road improvements. Additionally, county officials have complained that arrangements of this type are unnecessarily complicated to undertake, since under the Local Government Cooperation Act in Chapter 45 of the Kentucky Revised Statutes, such arrangements must have the approval of the Attorney General. It has been suggested, therefore, that legislation be enacted which would allow local governments to more easily contract with one another to perform road repairs.

Lastly, it has been proposed that the technical expertise necessary to undertake a local road program, once available to the counties from the Bureau of Highways, be made available from some other contact point, such as a university. Proponents of this idea envision the contact point providing engineering and technical assistance, planning and research to local governments unable to afford such services from the private sector of the economy.

Opponents of any change in the way local roads are currently funded and administered argue that the maintenance of local roads should remain a local responsibility, since the state has a system of higher traffic volume roads of its own to maintain, which it cannot adequately fund. Further, they suggest that low volume local roads should continue to be a low priority in regard to state assistance. Finally, it has often been maintained that local governments could contribute a larger share of funding themselves, if local officials did a better job of identifying needs to their constituents.

The General Assembly then, must decide whether further adjustments to the County Road Aid and Municipal Aid programs in the form of legislation are warranted, and whether such changes would enhance the ability of local governments to preserve the county road and city street systems.

TRANSPORTATION OF COAL BY MOTOR CARRIERS

Prepared by Jim Roberts

Issue

Should the General Assembly enact legislation which would allow coal trucks to be operated at weight limits higher than prescribed by the Department of Highways?

Background

The 1982 Regular Session of the General Assembly passed Senate Bill 144, which would have established a permit system for transporters of natural resources to haul commodities in excess of the prescribed weight limits. Since the passage of this legislation, litigation has been filed restraining the Transportation Cabinet from implementing the provisions of the bill. In addition, the Transportation Cabinet's administrative officials have offered a variety of reasons that the bill is unworkable.

These actions have negated any effect of Senate Bill 144. The problem of overweight trucks in the coalfields remains an issue as the next session of the General Assembly approaches. The basic problem the legislature faces is to find a method to permit coal to be transported at higher weights under a procedure which would either limit the road damage or assess a fee to maintain the affected roads without creating administrative chaos.

Discussion

Opponents of permitting motor carriers to exceed posted limits cite road damage problems as the primary obstacle. Engineering studies have been completed which conclude that damage to road beds increases dramatically as the cargo weights increase. The damage is even more critical when the motor carrier has fewer axles. It is not uncommon for a motor carrier to leave a mine site with 100,000 pounds on a tri-axle or tandem truck on a road whose weight limit is 30,000 pounds or less. Opponents of permit legislation believe road damage costs would far exceed any fee which could be assessed for such a permit.

Opponents of establishing a permit system believe that condoning higher weights will proliferate problems. Those against increased weight limits contend that the majority of coal truckers are currently operating illegally, and that granting higher weight limits will simply encourage haulers to further increase payloads. Rather than supporting more lenient guidelines, the sentiment of this group would be for greater enforcement of existing laws. The problem, from this viewpoint, is not that the current situation is creating the adversity, but rather that lackadaisical enforcement efforts have encouraged ignoring the law.

Additional arguments against establishing a permit procedure for transportation are that such a proposal would constitute special legislation and thus prompt an unfavorable court decision, and that any permitting of increased weights, especially on federal-aid highways, could jeopardize the Commonwealth's federal highway appropriation. Each year the Transportation Cabinet must document its efforts to enforce the federal motor carrier size and weight laws; permits issued for over-dimensional carriers is an item included in the review. If the Federal Highway Administration believes the weight enforcement policy to be too liberal, punative action, such as withholding federal funds, could be taken against the Commonwealth.

Proponents of increased weight limits for coal haulers believe their adversaries to be unaware of the daily constraints the haulers face. A typical example would involve a mine site located on a county road. This type of road may have a posted weight of 18,000 pounds; the empty coal truck weight is 30,000 pounds. In this situation, the motor carrier is in violation of the law before the first lump of coal is placed in the vehicle. If the motor carrier obeyed the law, the coal could not be transported.

Proponents questioned the validity of the posted weights prescribed by the Transportation Cabinet. In their opinion roads with lower weight classifications are constantly withstanding higher haul weights and the damage being done by those vehicles is repairable. Advocates believe that the issue is not that damage to the road is occurring, but rather establishing a system of repairing damage so that coal can be transported.

The coal industry contributes to the economy of the Commonwealth by employing Kentuckians and by paying the state a severance tax. The inability to transport coal, in the viewpoint of the proponents, would do great damage to the economy of the Commonwealth; however, most of those proponents for increased haul weights understand the road damage issue and advocate a fee, tax, or other levy to be assessed on coal through either the operator or the hauler, to be earmarked for road repair. Senate Bill 144 included such a fee and those advocating increased weight limits have not overlooked the necessity of developing some system for repair of road damage by increased weights.

The issue of overweight coal trucks has been the subject of legislative committee meetings, a Governor's Task Force, engineering studies and countless other meetings by both the private and public sectors. The difficult issue which must be resolved is to establish a method to move coal economically from the mine site without compromising the integrity of the existing road system. Any recommended solution which reduces the competitiveness of Kentucky coal in the marketplace, forces coal haulers to continue to operate their vehicles in violation of the law, fails to take into account the road maintenance problem, or creates an administrative burden to state government will meet serious opposition during the session.

MOTOR CARRIER WEIGHT AND DIMENSIONAL LIMITS

Prepared by James Monsour

Issue

Should the state enact legislation complying with federally mandated changes in truck weights and dimensions?

Background

Two pieces of legislation recently passed by the U.S. Congress, the Transportation Appropriations Act (P.L. 97-369) and the Surface Transportation Assistance Act of 1982 (P.L. 97-424), have resulted in several significant changes in federal provisions governing the width and weight of trucks and the length of trailers using the interstate and other highways qualifying for Federal-Aid Primary System funds. For the first time, semitrailer and trailer lengths in commercial motor vehicle operations on certain highway systems are regulated at the federal level. Truck width has been changed, and truck weight limits have been mandated to achieve national uniformity.

Section 133 of the Surface Transportation Assistance Act (STAA) requires that all states permit vehicles on the Interstate System with weights as follows:

(a) 80,000 pounds gross weight for vehicle combinations of five or more axles, in accordance with the bridge formula;

(b) 34,000 pounds on a tandem axle; and

(c) 20,000 pounds on a single axle.

These weights are inclusive of all tolerances. In addition, the legal gross weight must satisfy the limiting conditions in the bridge gross weight formula, which establishes maximum allowable weights for all groupings and spacings of axles.

Section 411 of the STAA requires that all states permit the operation of tractor-semitrailer-trailer combinations on the Interstate System and on other designated portions of the Federal-Aid Primary System. This section also prohibits a state from establishing, maintaining or enforcing a length limitation of less than 48 feet on the semitrailer portion of a tractor-semitrailer combination, and of less than 28 feet on the length of any semitrailer-trailer combination, on any segment of the Interstate System and on the qualifying Federal-Aid Primary System highways.

Additionally, this legislation prohibits all states from imposing overall length limits on the operation of tractor-semitrailer-trailer combinations on the Interstate System and designated portions of the Federal-Aid Primary System; and it prohibits the states from imposing a length limitation on the tractor portion of truck combinations, as well.

Section 321 of the Transportation Appropriations Act provides for the establishment of a vehicle width limitation of 102 inches on any segment of the Interstate System, and any other qualifying Federal-Aid highways. The 102 inches refers to the total outside width of any vehicle or its load, excepting mirrors and other safety devices, which may extend up to three inches on each side of the vehicle.

The mandated changes in weights and length described above became effective on January 6, 1983, and April 6, 1983, respectively. The width requirement became effective at the time the bill was signed into law, December 18, 1982. Federal regulations implementing these changes stipulate state compliance by October 1, 1983. Non-compliance will result in the withholding of a portion of Kentucky's Federal-Aid appropriation. For Kentucky to comply, amendments to KRS 189.221 and 189.222 are necessary, since presently Kentucky's truck weight, length and width limits are at variance with the federally mandated changes.

The changes necessary for compliance include the following:

(a) Deletion of the overall length restriction of 65 feet and enactment of the 48 feet limit for semitrailers and the 28 feet limit for trailers described earlier;

(b) Deletion of the 5 percent tolerance on the allowable gross weight of 80,000 pounds;

(c) Amendment of allowable width from 96 inches to 102 inches; and

(d) Amendment of allowable weight per axle on tandem axles from 32,000 to 34,000 pounds.

Discussion

Several states whose legislatures are currently in session have chosen, up to this time, not to enact legislation complying with all the mandated changes. One requirement, that the states repeal their overall limits on semitrailer and trailer combinations, or so called "double bottoms," has met with considerable opposition. A second requirement, that states designate certain highways constructed with federal aid monies as "reasonable access" routes to service areas for these trucks, has also been opposed by several states. At issue in both instances is the safety of these large trucks.

It was the intent of the federal legislation to provide for the needs of interstate commerce by granting appropriate access to highways built with federal financial assistance without compromising the safety of the traveling public and the structural integrity of the highway system. Accordingly, the states were asked to designate the highways within their boundaries which would provide reasonable access for the longer and wider trucks, since, it was felt, the states would have the best knowledge of the structural capacity of bridges and pavements, traffic volumes, and unique climate conditions.

Congested or mountainous states in the eastern United States, however, not only question the safety of double bottoms, which typically stretch 75 feet in length and weigh up to 40 tons when carrying a full load, but also protest that these vehicles cause inordinate damage to highways. As a result, Connecticut, Vermont, Massachusetts, and New Jersey have banned tandem-trailer trucks from their highways. Georgia has banned them from its non-interstate roads. And in almost all other eastern states, transportation officials are embroiled in controversy with the federal government over which roads should be designated to handle large trucks. Virginia, for example, designated 155 miles, only to have the U.S. Department of Transportation add 1,750 more. In Kentucky the Transportation Cabinet has designated 2,000 miles, to which the U.S. Department of Transportation has added 381 more.

In regard to mandated changes in truck weights and width, Kentucky really has no alternative but to enact complying legislation, either when the 1984 General Assembly convenes, or during a special session, if one is called before that time.

Should it choose, however, Kentucky could contest the mandated increase in semitrailer-trailer lengths which legalize double bottom trucks. This course is not likely, in view of the fact that tandem trailers have been allowed by special permit to operate on Kentucky's highways for several years. Similarly, opposition to reasonable access roads added by the U.S. Department of Transportation may be unnecessary, since there are indications that the federal government will agree to trim the roster of primary highways opened to big trucks, rather than fight the states in court.

OTHER TRANSPORTATION ISSUES

Motor Vehicle Transfers and Related Registration Fees

Issue

Should the General Assembly amend the motor vehicle registration statutes to establish a distinct policy on motor vehicle transfers?

Background

The 1982 session of the General Assembly passed legislation which requires automobiles to be registered in the owner's birth-month. This procedure represents an effort to stagger registration over a 12-month period rather than complete the bulk of vehicle registration in the first two months of the year. Since the passage of that legislation, a controversy has developed over vehicle transfer and the definition of a registration period.

Currently, the Transportation Cabinet is taking the position that when a vehicle is transferred, the unused portion of the vehicle registration would remain valid and transferred to the new owner. Upon expiration of the registration, the new owner would obtain a registration plate expiring in his birth-month.

An Attorney General's Opinion issued early in 1983 takes exception to the policy interpretation. The opinion states that registration is terminated upon transfer, the unused portion of the registration period is lost, and the new owner must submit new registration upon transfer.

Both sides of this dispute cite various statutes in KRS Chapters 186 and 186A to support their positions. With the possibility of these conflicting interpretations continuing, the General Assembly must decide whether to offer legislative changes to the statutes to correct these administrative ambiguities.

Occupational Driver's License

Issue

Should the General Assembly enact legislation authorizing issuance of an occupational driver's license?

Background

An occupational driver's license for Kentucky would enable citizens who would otherwise lose their driver's licenses to retain certain driving privileges. These privileges could be exercised only under limited circumstances, such as driving to and from work or in the event of a medical emergency.

Currently, the Justice Secretary may restrict the driving of the holder of a standard operator's license to such terms and conditions as deemed necessary, in conjunction with a driver's education program, upon a first conviction of driving under the influence of alcohol or drugs, or upon first conviction of an implied consent law. Traditionally, this option of restricting the licensee (rather than the license) has not been exercised.

Convictions for certain offenses, such as habitual violations and failure to meet traffic-related court obligations, currently result in the loss of driving privileges. Legislation by the 1984 General Assembly could provide for the issuance of an occupational driver's license in these cases.

It has been suggested that certain criteria be established for the issuance of an occupational driver's license. These could include the establishment of specific restrictions, guidelines for determination of need for such a license and establishment of driver education requirements. The cost of such driver education could be included in the license fee.

Proponents of the occupational license feel that it should be provided to any person whose license has been revoked. They point out that such a license would prove beneficial in rural areas that have no public transportation system or in situations where a family's welfare and livelihood are dependent upon a licensed driver.

Opponents of the restricted license maintain that the use of the roads is a privilege granted by the state, and that constant or flagrant misuse of that privilege should require license suspension. In addition, it is argued that restrictions placed upon a license would be difficult to enforce and that further driver improvement courses would not prove useful.